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. 2634. 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; unvouchered 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	Repealed.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.

(Aug. 29, 1916, ch. 418, § 2, 39 Stat. 649; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.)

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 1916.

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 Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 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.

(Aug. 29, 1916, ch. 418, § 2, 39 Stat. 649.)

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.

§ 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.

(Aug. 29, 1916, ch. 418, § 2, 39 Stat. 649; Nov. 9, 1921, ch. 119, § 3, 42 Stat. 212.)

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.

(Aug. 29, 1916, ch. 418, § 2, 39 Stat. 650.)

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-

tablished 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.

(Aug. 29, 1916, ch. 418, § 2, 39 Stat. 650; Aug. 7, 1946, ch. 770, § 1(53), 60 Stat. 870.)

CODIFICATION

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

AMENDMENTS

1946—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.

§ 6. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 644

Section, act June 5, 1920, ch. 235, 41 Stat. 886, placed a limit on salaries of officers and employees of Council of National Defense.

CHAPTER 2—BOARD OF ORDNANCE AND FORTIFICATION

§§ 11 to 15. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1029

Section 11, act Sept. 22, 1888, ch. 1028, § 1, 25 Stat. 489, related to composition and duties of Board of Ordnance and Fortification.

Section 12, act Feb. 24, 1891, ch. 283, 26 Stat. 769, provided for a civilian member of Board.

Section 13, 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.

Section 15, act Sept. 22, 1888, ch. 1028, § 6, 25 Stat. 490, related to purchases and tests.

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:

Proc. No. 2525, Dec. 7, 1941, 6 F.R. 6321, 55 Stat. Pt. 2, 1700.
Proc. No. 2526, Dec. 8, 1941, 6 F.R. 6323, 55 Stat. Pt. 2, 1705.
Proc. No. 2527, Dec. 8, 1941, 6 F.R. 6324, 55 Stat. Pt. 2, 1707.
Proc. No. 2533, Dec. 29, 1941, 7 F.R. 55, 55 Stat. Pt. 2, 1714.
Proc. No. 2537, Jan. 14, 1942, 7 F.R. 329, 56 Stat. Pt. 2, 1933, revoked by Proc. No. 2678, Dec. 29, 1945, 11 F.R. 221, 60 Stat. Pt. 2, 1336.
Proc. No. 2563, July 17, 1942, 7 F.R. 5535, 56 Stat. Pt. 2, 1970.
Proc. No. 2655, July 14, 1945, 10 F.R. 8947, 59 Stat. Pt. 2, 870.
Proc. No. 2674, Dec. 7, 1945, 10 F.R. 14945, 59 Stat. Pt. 2, 889.
Proc. No. 2685, Apr. 11, 1946, 11 F.R. 4079, 60 Stat. Pt. 2, 1342, set out as a note preceding section 1 of Appendix to this title.

WORLD WAR I PROCLAMATIONS

Proclamations issued under this chapter during the years 1917 and 1918 will be found in 40 Stat. 1651, 1716, 1730, and 1772.

§ 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, 1798, 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, 1798, 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, 1798, ch. 66, § 3, 1 Stat. 578.

CHAPTER 4—ESPIONAGE

§§ 31 to 39. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

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 32, act June 15, 1917, ch. 30, title I, § 2, 40 Stat. 218, related to unlawful disclosures affecting national defense. See section 794 of Title 18.

Section 33, act June 15, 1917, ch. 30, title I, § 3, 40 Stat. 219, related to seditious 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 794 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, § 8, 40 Stat. 219, related to places subject to provisions of sections 31 to 42 of this title. See section 2388 of Title 18.

Section 38, act June 15, 1917, ch. 30, title I, § 7, 40 Stat. 219, related to jurisdiction of courts-martial and military commissions.

Section 39, act June 15, 1917, ch. 30, title XIII, § 2, 40 Stat. 231; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, related to jurisdiction of Canal Zone courts over offenses on high seas. See section 3241 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 195 of this title.

§ 41. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section, act June 15, 1917, ch. 30, title VIII, § 4, 40 Stat. 226, defined ''Foreign government''. See section 11 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.

§ 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 191 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

§§ 45 to 45d. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

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

§§ 46 to 46b. Repealed. Oct. 31, 1951, ch. 655, § 56(c), 65 Stat. 729

Section 46, act May 13, 1950, ch. 185, § 2, 64 Stat. 159, related to unlawful disclosure of classified information. See section 798 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(*l*) 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.

(July 15, 1955, ch. 372, § 2, 69 Stat. 365; Pub. L. 93–377, § 1(b), Aug. 17, 1974, 88 Stat. 472.)

AMENDMENTS

1974—Pub. L. 93–377 in par. (a) made minor changes in phraseology, in par. (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.

(July 15, 1955, ch. 372, § 3, 69 Stat. 365; Pub. L. 93–377, § 1(b), Aug. 17, 1974, 88 Stat. 473.)

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.].

(July 15, 1955, ch. 372, §4, 69 Stat. 366; Pub. L. 104–208, div. C, title III, §308(f)(7), Sept. 30, 1996, 110 Stat. 3009–622.)

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 1081(a), (b) of Pub. L. 108–458, 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, Aliens and Nationality.

§ 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.

(July 15, 1955, ch. 372, §5, 69 Stat. 366; Pub. L. 93–377, §1(b), Aug. 17, 1974, 88 Stat. 473.)

AMENDMENTS

1974—Pub. L. 93–377 designated existing provisions as subsec. (a), substituted ''Attorney General'' for ''Board as administering agent'', and added subsec. (b).

§ 47e. Certification of award; approval; payment

Any awards granted under section 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.

(July 15, 1955, ch. 372, §6, 69 Stat. 366; Pub. L. 93–377, §1(c), Aug. 17, 1974, 88 Stat. 473.)

REFERENCES IN TEXT

The National Security Act of 1947, as amended, referred to in text, is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

AMENDMENTS

1974—Pub. L. 93–377 substituted ''Attorney General'' for ''Awards Board''.

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.

§ 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.].

(July 15, 1955, ch. 372, §7, 69 Stat. 366.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (c), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 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 2011 of Title 42 and Tables.

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, ARMS, AND WAR MATERIAL GENERALLY

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

Sec.
51 to 81. Repealed or Transferred.
82. Procurement of ships and material during war.
83 to 88. Repealed or Omitted.

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

91 to 96. Repealed or Omitted.

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

§§ 51 to 57. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 51, act Aug. 5, 1882, ch. 395, 22 Stat. 299, related to pay of master amorer at Springfield Armory.

Section 52, act June 23, 1874, ch. 486, 18 Stat. 282, related to pay of clerks at Springfield Armory.

Section 53, R.S. § 1665, required an annual account of expenses of national armories, together with an account of arms made and repaired thereon.

Section 54, acts Aug. 18, 1890, ch. 797, § 2, 26 Stat. 320; Aug. 7, 1946, ch. 770, § 1(52), 60 Stat. 870, related to accounts of cost of type and experimental manufacture of guns and other articles.

Section 55, R.S. § 1666, authorized Secretary of War to abolish useless or unnecessary arsenals. See section 4532 of Title 10, Armed Forces.

Section 56, R.S. § 1669, provided for forfeitures by reason of misconduct of workmen in armories.

Section 57, R.S. § 1671, exempted from jury duty all artificers and workmen employed in armories and arsenals, of the United States.

§ 58. Repealed. Sept. 1, 1954, ch. 1208, title III, § 305(d), 68 Stat. 1114

Section, act July 17, 1912, ch. 236, 37 Stat. 193, related to awards. See section 4501 et seq. of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Sept. 1, 1954, see section 307 of act Sept. 1, 1954.

§§ 59 to 66. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 59, act July 26, 1886, ch. 781, § 1, 24 Stat. 151, related to testing of rifled cannon for Navy.

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

Section 61, acts Mar. 3, 1879, ch. 183, 20 Stat. 412; Apr. 14, 1937, ch. 79, 50 Stat. 63, authorized issuance of arms and ammunition to protect public property, provided for reimbursement. See section 4655 of Title 10, Armed Forces.

Section 62, acts Feb. 10, 1920, ch. 64, 41 Stat. 403; June 5, 1920, ch. 240, 41 Stat. 976; May 26, 1952, ch. 334, 66 Stat. 94, authorized loan of rifles to organizations of honorably discharged soldiers. See section 4683 of Title 10.

Section 62a, act 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.

Section 62b, act Dec. 15, 1926, 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.

Section 62c, acts May 29, 1934, ch. 369, 48 Stat. 815; Aug. 30, 1935, ch. 826, 49 Stat. 1013, authorized Secretary of War to donate Army equipment loaned under authority of section 62 of this title.

Section 63, act 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.

Section 64, acts May 28, 1908, ch. 215, § 14, 35 Stat. 443; June 28, 1950, ch. 383, title IV, § 402(g), 64 Stat. 273; Oct. 31, 1951, ch. 654, § 2(26), 65 Stat. 707, authorized sale of obsolete small arms to patriotic organizations. See sections 4684 and 9684 of Title 10.

Section 64a, act 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.

Section 65, acts Apr. 23, 1904, ch. 1485, 33 Stat. 276; Aug. 1, 1953, ch. 305, title VI, § 645, 67 Stat. 357, authorized sale of serviceable ordnance and ordnance stores to American designers.

Section 66, acts Feb. 8, 1889, ch. 116, 25 Stat. 657; Mar. 3, 1899, ch. 423, 30 Stat. 1073; May 26, 1900, ch. 586, 31 Stat. 216; June 28, 1950, ch. 383, title IV, § 402(e), 64 Stat. 273; Oct. 31, 1951, ch. 654, § 2(27), 65 Stat. 707, authorized issuance of condemned ordnance to State homes for soldiers and sailors. See sections 4686 and 9686 of Title 10.

§ 67. Transferred

CODIFICATION

Section, acts May 22, 1896, ch. 231, 29 Stat. 133; May 26, 1928, ch. 785, 45 Stat. 773; Feb. 28, 1933, ch. 137, 47 Stat. 1369; June 19, 1940, ch. 398, § 1, 54 Stat. 491; July 31, 1947, ch. 421, 61 Stat. 707; Feb. 27, 1948, ch. 76, § 1, 62 Stat. 37; Oct. 31, 1951, ch. 654, § 2(2), 65 Stat. 706, which authorized loans or gifts of condemned or obsolete equipment, was transferred to section 150p of former Title 5, Executive Departments and Government Officers and Employees, and subsequently repealed and reenacted as section 2572 of Title 10, Armed Forces, by act Aug. 10, 1956, ch. 1041, §§ 1, 53, 70A Stat. 143, 641.

§§ 68 to 71. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 68, acts Mar. 4, 1909, ch. 319, § 47, 35 Stat. 1075; June 28, 1950, ch. 383, title IV, § 402(i), 64 Stat. 273; Oct. 31, 1951, ch. 654, § 2(28), 65 Stat. 708, authorized sale of obsolete ordnance for public parks, public buildings and

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

Section 69, act Mar. 2, 1905, ch. 1307, 33 Stat. 841, authorized sale of individual pieces of armament. See section 2574 of Title 10.

Section 70, acts Mar. 3, 1909, ch. 252, 35 Stat. 751; June 28, 1950, ch. 383, title IV, § 402(h), 64 Stat. 273, authorized sale of ordnance property to officers of the Navy and Marine Corps. See section 4625 and 9625 of Title 10.

Section 71, act Mar. 3, 1909, ch. 252, 35 Stat. 750, authorized sale of ordnance stores to civilian employees of 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 Aug. 29, 1916, ch. 418, § 1, 39 Stat. 643, related to sale of ordnance and stores to Cuba.

§ 73. Repealed. Aug. 1, 1953, ch. 305, title VI, § 645, 67 Stat. 357

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.

§§ 74 to 81. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 74, act Jan. 22, 1923, ch. 28, 42 Stat. 1142, provided that net proceeds of sales of useless ordnance material by Navy Department should be covered into Treasury as ''Miscellaneous receipts''. See section 7543 of Title 10, Armed Forces.

Section 75, act Aug. 24, 1912, ch. 391, § 1, 37 Stat. 589, related to payment for transfers of ordnance or stores to bureaus or departments.

Section 76, act June 20, 1878, ch. 359, § 1, 20 Stat. 223, authorized private use of a machine for testing iron and steel.

Section 77, acts Mar. 3, 1885, ch. 360, 23 Stat. 502; May 29, 1928, ch. 901, par. 27, 45 Stat. 988, regulated tests of iron and steel and other materials for industrial purposes.

Section 78, act June 3, 1916, ch. 134, § 123, 39 Stat. 215, related to gauges, dies, and tools for manufacture of arms.

Section 79, act June 3, 1916, ch. 134, § 124, 39 Stat. 215, related to nitrate plants.

Section 80, act June 3, 1916, ch. 134, § 120, 39 Stat. 213, 214, related to procurement of war material and mobilization of industries. See sections 2538 to 2540 of Title 10.

Section 81, act May 14, 1928, ch. 544, 45 Stat. 509, authorized Secretary of War to secure assistance, whenever practicable, of Geological Survey, Coast and Geodetic Survey, or other mapping agencies of the Government in execution of military surveys and maps. Provisions similar to former section 81 were contained in the following appropriation acts:

Mar. 23, 1928, ch. 232, title I, 45 Stat. 342.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1123.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 273.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 911.
June 7, 1924, ch. 291, title I, 43, Stat. 496.
Mar. 2, 1923, ch. 178, title I, 42 Stat. 1402.
June 30, 1922, ch. 253, title I, 42 Stat. 741.

§ 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 therefor, 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 sue the United States to recover such further 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.

CODIFICATION

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 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, 1921).

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

Ex. Ord. No. 12742, Jan. 8, 1991, 56 F.R. 1079, as amended by Ex. Ord. No. 13286, §36, Feb. 28, 2003, 68 F.R. 10625, provided:

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.

SEC. 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).

SEC. 103. *Delegation of Authority under 10 U.S.C. 4501 and 9501, and 50 U.S.C. 82*.

(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.

SEC. 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 Secretaries 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. 486 [468], 10 U.S.C. 4501 and 9501 [former sections 4501 and 9501 of Title 10], and 50 U.S.C. 82, all rules and regulations issued under the Defense Production Act of 1950, as amended, with re-

[1] So in original. No subsec. (c) has been enacted.

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 having delegated responsibilities 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.

SEC. 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.

§§ 83 to 85. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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

Section 84, act Mar. 3, 1875, ch. 133, §1, 18 Stat. 455, related to expenditure at armories for perfection of patentable inventions.

Section 85, act Mar. 3, 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 2030 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

§§ 91 to 94. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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.

Section 94, acts June 16, 1938, ch. 458, §4, 52 Stat. 708; Apr. 3, 1939, ch. 35, §13, 53 Stat. 560, related to availability of appropriations for purposes of sections 91 to 94 of this title.

§ 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.

§ 96. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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. 811; July 23, 1946, ch. 590, 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–4 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

Act June 7, 1939, ch. 190, § 11, formerly § 10, as added by act July 23, 1946, ch. 590, 60 Stat. 596; renumbered § 11, Pub. L. 92–156, title V, § 503(1), Nov. 17, 1971, 85 Stat. 427, provided that this Act, which enacted this subchapter, be cited as the ''Strategic and Critical Materials Stock Piling Act'', prior to repeal by Pub. L. 96–41, § 2(b)(2), July 30, 1979, 93 Stat. 324.

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

Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071, as amended by Ex. Ord. No. 12417, May 2, 1983, 48 F.R. 20035, which related to delegation of functions vested in President by Strategic and Critical Materials Stock Piling Act, as amended [50 U.S.C. 98 et seq.], to various Federal agencies and officials, was revoked by Pub. L. 100–180, div. C, title II, § 3203(b), Dec. 4, 1987, 101 Stat. 1247, effective 30 days after Dec. 4, 1987.

EX. ORD. NO. 12626. NATIONAL DEFENSE STOCKPILE MANAGER

Ex. Ord. No. 12626, Feb. 25, 1988, 53 F.R. 6114, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), as amended, section 3203 of the National Defense Authorization Act for Fiscal Year 1988 (Public Law 100–180) [amending section 98e–1 of this title and enacting a provision set out as a note under section 98e–1 of this title], and section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is designated National Defense Stockpile Manager. The functions vested in the President by the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98 et seq.], except the functions vested in the President by sections 7, 8, and 13 of the Act [50 U.S.C. 98f, 98g, 98h–4], are delegated to the Secretary of Defense. The functions vested in the President by section 8(a) of the Act [50 U.S.C. 98g(a)] are delegated to the Secretary of the Interior. The functions vested in the President by section 8(b) of the Act [50 U.S.C. 98g(b)] are delegated to the Secretary of Agriculture.

SEC. 2. The functions vested in the President by section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)), are delegated to the Secretary of Defense.

SEC. 3. The functions vested in the President by section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)) [now 40 U.S.C. 574(d)], are delegated to the Secretary of Defense.

SEC. 4. In executing the functions delegated to him by this Order, the Secretary of Defense may delegate such functions as he may deem appropriate, subject to his direction. The Secretary shall consult with the heads of affected agencies in performing the functions delegated to him by this Order.

RONALD REAGAN.

§ 98a. Congressional findings and declaration of purpose

(a) The Congress finds that the natural resources of the United States in certain strategic and critical materials are deficient or insufficiently developed to supply the military, industrial, and essential civilian needs of the United States for national defense.

(b) It is the purpose of this subchapter to provide for the acquisition and retention of stocks of certain strategic and critical materials and to encourage the conservation and development of sources of such materials within the United States and thereby to decrease and to preclude, when possible, a dangerous and costly dependence by the United States upon foreign sources for supplies of such materials in times of national emergency.

(c) 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.

(June 7, 1939, ch. 190, § 2, as added Pub. L. 96–41, § 2(a), July 30, 1979, 93 Stat. 319; amended Pub. L. 100–180, div. C, title II, § 3202(b), Dec. 4, 1987, 101 Stat. 1245; Pub. L. 103–160, div. C, title XXXIII, § 3311, Nov. 30, 1993, 107 Stat. 1961; Pub. L. 104–201, div. C, title XXXIII, § 3311(b), Sept. 23, 1996, 110 Stat. 2857.)

PRIOR PROVISIONS

A prior section 98a, acts June 7, 1939, ch. 190, § 2, 53 Stat. 811; July 23, 1946, ch. 590, 60 Stat. 596; 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. 90–608, § 402, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175, related to determination of strategic and critical materials, the quantity and quality to be purchased, formation and functions of industry advisory committees, and the subsistence and traveling expenses of members of those committees, prior to repeal by section 2(a) of Pub. L. 96–41.

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:

''(1) 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.

''(2) 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.

''(3) 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''.

Subsec. (c)(3). Pub. L. 103–160, § 3311(2), added par. (3).

1987—Subsec. (c). Pub. L. 100–180 added subsec. (c).

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 98h–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. 815, 822; June 30, 1949, ch. 288, title I, §102(a), 63 Stat. 380; 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. 90–608, §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.''

1988—Subsec. (c)(1). Pub. L. 100–456 substituted ''December 4, 1987'' for ''the date of the enactment of the National Defense Stockpile Amendments of 1987'', which for purposes of codification had been translated as ''December 4, 1987'', thus requiring no change in text.

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 cls. (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.''

DELEGATION OF FUNCTIONS

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.

§ 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 2093 of the Appendix to this title and transferred to the stockpile by the President pursuant to subsection (f) of such section.

(5) Materials transferred to the United States under 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 714b(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 subsection, are suitable for disposal through the stockpile, and are uncontaminated.

(June 7, 1939, ch. 190, § 4, as added Pub. L. 96–41, § 2(a), July 30, 1979, 93 Stat. 320; amended Pub. L. 99–661, div. C, title II, § 3207(a)(1), Nov. 14, 1986, 100 Stat. 4069; Pub. L. 104–106, div. C, title XXXIII, § 3311, Feb. 10, 1996, 110 Stat. 630; Pub. L. 110–246, title III, § 3001(b)(1)(A), (2)(Z), June 18, 2008, 122 Stat. 1820, 1821.)

REFERENCES IN TEXT

Section 1704(b) of title 7, referred to in subsec. (a)(3), was amended generally by Pub. L. 101–624, title XV, § 1512, Nov. 28, 1990, 104 Stat. 3635, and, as so amended, no longer contains provisions relating to a supplemental stockpile.

PRIOR PROVISIONS

A prior section 98c, acts June 7, 1939, ch. 190, § 4, 53 Stat. 811; July 23, 1946, ch. 590, 60 Stat. 598; 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. 90–608, § 402, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175; Apr. 21, 1976, Pub. L. 94–273, § 37, 90 Stat. 380, required reports to Congress, prior to repeal by section 2(a) of Pub. L. 96–41. See section 98h–2 of this title.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–246 made technical amendment to reference in original act which appears in text as reference to section 1704(b) of title 7.

1996—Subsec. (a)(10). Pub. L. 104–106, § 3311(b), added par. (10).

Subsec. (c). Pub. L. 104–106, § 3311(a), added subsec. (c).

1986—Pub. L. 99–661 substituted ''on July 29, 1979'' for ''on the day before the date of the date of enactment of the Strategic and Critical Materials Stock Piling Revision Act of 1979'' in pars. (1) and (3), and ''after July 29, 1979'' for ''on or after the date of the enactment of the Strategic and Critical Materials Stock Piling Revision Act of 1979'' in par. (2).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

CLARIFICATION OF STOCKPILE STATUS OF CERTAIN MATERIALS

Pub. L. 102–484, div. C, title XXXIII, § 3315, Oct. 23, 1992, 106 Stat. 2654, as amended by Pub. L. 103–337, div. A, title X, § 1070(c)(4), Oct. 5, 1994, 108 Stat. 2858, provided that: ''All materials purchased under section 303 of the Defense Production Act of 1950 ([former] 50 U.S.C. App. 2093) and held in the Defense Production Act inventory as of June 30, 1992, are hereby transferred to the National Defense Stockpile and shall be managed, controlled, and subject to disposal by the National Defense Stockpile Manager as provided in the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98a et seq.) [50 U.S.C. 98 et seq.].''

§ 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 in the annual materials plan submitted to Congress for that year under section 98h–2(b) of this title and after that plan is submitted the President proposes (or Congress requires) a significant change in any such transaction, or a significant transaction not 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 committees 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 98e(a) of this title or under section 98f(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.

(June 7, 1939, ch. 190, § 5, as added Pub. L. 96–41, § 2(a), July 30, 1979, 93 Stat. 321; amended Pub. L. 97–35, title II, § 203(a), (b), Aug. 13, 1981, 95 Stat. 381, 382; Pub. L. 98–525, title IX, § 903, Oct. 19, 1984, 98 Stat. 2573; Pub. L. 99–661, div. C, title II, § 3207(a)(2), Nov. 14, 1986, 100 Stat. 4069; Pub. L. 100–180, div. C, title II, § 3206(a), Dec. 4, 1987, 101 Stat. 1247; Pub. L. 102–484, div. C, title XXXIII, § 3312, Oct. 23, 1992, 106 Stat. 2653; Pub. L. 103–160, div. C, title XXXIII, § 3312, Nov. 30, 1993, 107 Stat. 1962.)

PRIOR PROVISIONS

A prior section 98d, acts June 7, 1939, ch. 190, § 5, 53 Stat. 812; July 23, 1946, ch. 590, 60 Stat. 598, related to release of stock pile materials, prior to repeal by section 2(a) of Pub. L. 96–41. See section 98f of this title.

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 45 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. In computing any 30-day period for the purpose of the preceding sentence, 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.''

1992—Subsec. (b). Pub. L. 102–484 struck out ''(1)'' after ''the stockpile'' and '', or (2) 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''.

1987—Subsec. (a)(2). Pub. L. 100–180 struck out ''or until each such committee, before the expiration of such period, notifies the President that it has no objection to the proposed transaction'' before period at end of first sentence.

1986—Subsec. (b). Pub. L. 99–661 substituted ''paragraph (3), (4), or (5)'' for ''paragraph (4) or (5)''.

1984—Subsec. (b)(2). Pub. L. 98–525, § 903(b), substituted ''$100,000,000'' for ''$250,000,000''.

Pub. L. 98–525, § 903(a), substituted ''an unobligated balance'' for ''a balance'' where first appearing and ''$250,000,000'' for ''$1,000,000,000 or, in the case of a disposal to be made after September 30, 1983, if the disposal would result in there being a balance in the fund in excess of $500,000,000''.

1981—Subsec. (a). Pub. L. 97–35, § 203(a), designated existing provisions as par. (1), inserted applicability to other incidental expenses, substituted ''until expended, unless otherwise'' for ''for a period of five fiscal years, if so'', and added par. (2).

Subsec. (b). Pub. L. 97–35, § 203(b), inserted designation for cl. (1) and added cl. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 903(b) of Pub. L. 98–525, as amended by Pub. L. 99–145, title XVI, § 1611(b), Nov. 8, 1985, 99 Stat. 776, provided in part that the amendment by section 903(b) of Pub. L. 98–525, is effective Oct. 1, 1987.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 203(f) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1981.''

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

Pub. L. 99–145, title XVI, § 1612, Nov. 8, 1985, 99 Stat. 776, as amended by Pub. L. 99–661, div. C, title II, § 3201, Nov. 14, 1986, 100 Stat. 4067, prohibited action before Oct. 1, 1987, to implement or administer any change in a stockpile goal in effect on Oct. 1, 1984, that would result in a reduction in the quality or quantity of any strategic and critical material acquired for the National Defense Stockpile.

MATERIALS IN THE NATIONAL DEFENSE STOCKPILE

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

Pub. L. 110–181, div. A, title XIV, §§ 1413, 1414, Jan. 28, 2008, 122 Stat. 418, 419.

Pub. L. 109–163, div. C, title XXXIII, §§ 3303, 3304, Jan. 6, 2006, 119 Stat. 3546.

Pub. L. 108–375, div. C, title XXXIII, § 3303, Oct. 28, 2004, 118 Stat. 2193.

Pub. L. 107–107, div. C, title XXXIII, §§ 3301, 3303, 3306(a), Dec. 28, 2001, 115 Stat. 1388, 1389, 1391.

Pub. L. 106–398, § 1 [div. C, title XXXIII, § 3303], Oct. 30, 2000, 114 Stat. 1654, 1654A–483.

Pub. L. 106–65, div. C, title XXXIV, § 3402(a)–(e), Oct. 5, 1999, 113 Stat. 972, 973; Pub. L. 108–136, div. C, title XXXIII, § 3302, Nov. 24, 2003, 117 Stat. 1788; Pub. L. 109–163, div. C, title XXXIII, § 3302(b), Jan. 6, 2006, 119 Stat. 3546; Pub. L. 110–181, div. A, title XIV, § 1412(a), Jan. 28, 2008, 122 Stat. 418.

Pub. L. 106–31, title I, § 303, May 21, 1999, 113 Stat. 67.

Pub. L. 105–262, title VIII, § 8109, Oct. 17, 1998, 112 Stat. 2322.

Pub. L. 105–261, div. C, title XXXIII, §§ 3301, 3303, Oct. 17, 1998, 112 Stat. 2262, 2263; Pub. L. 106–65, div. C, title XXXIV, § 3403(a), Oct. 5, 1999, 113 Stat. 973; Pub. L. 106–398, § 1 [div. C, title XXXIII, § 3302], Oct. 30, 2000, 114 Stat. 1654, 1654A–483; Pub. L. 107–107, div. C, title XXXIII, § 3304(a), Dec. 28, 2001, 115 Stat. 1390; Pub. L. 108–375, div. C, title XXXIII, § 3302, Oct. 28, 2004, 118 Stat. 2193; Pub. L. 109–163, div. C, title XXXIII, § 3302(a), Jan. 6, 2006, 119 Stat. 3545; Pub. L. 109–364, div. C, title XXXIII, § 3302(a), Oct. 17, 2006, 120 Stat. 2513; Pub. L. 110–181, div. A, title XIV, § 1412(b), Jan. 28, 2008, 122 Stat. 418; Pub. L. 110–417, [div. A], title XIV, § 1412(a), Oct. 14, 2008, 122 Stat. 4648.

Pub. L. 105–85, div. A, title XXXIII, §§ 3301, 3303–3305, Nov. 18, 1997, 111 Stat. 2056, 2057; Pub. L. 106–65, div. C, title XXXIV, §§ 3402(f)(2), 3403(b), Oct. 5, 1999, 113 Stat. 973; Pub. L. 107–107, div. C, title XXXIII, §§ 3304(b), 3305, Dec. 28, 2001, 115 Stat. 1390; Pub. L. 109–364, div. C, title XXXIII, § 3302(b), Oct. 17, 2006, 120 Stat. 2513; Pub. L. 110–417, [div. A], title XIV, § 1412(b), Oct. 14, 2008, 122 Stat. 4648; Pub. L. 111–84, div. A, title XIV, § 1412, Oct. 28, 2009, 123 Stat. 2562.

Pub. L. 104–201, div. C, title XXXIII, §§ 3301, 3303, Sept. 23, 1996, 110 Stat. 2854, 2855; Pub. L. 106–65, div. C, title XXXIV, §§ 3402(f)(1), 3403(c), Oct. 5, 1999, 113 Stat. 973, 974; Pub. L. 107–107, div. C, title XXXIII, § 3304(c), Dec. 28, 2001, 115 Stat. 1390; Pub. L. 109–364, div. C, title XXXIII, § 3302(c), Oct. 17, 2006, 120 Stat. 2513.

Pub. L. 103–337, div. C, title XXXIII, § 3304, Oct. 5, 1994, 108 Stat. 3098.

Pub. L. 103–160, div. C, title XXXIII, §§ 3301, 3303(a), Nov. 30, 1993, 107 Stat. 1960, 1961.

Pub. L. 102–484, div. C, title XXXIII, §§ 3301–3303, Oct. 23, 1992, 106 Stat. 2649–2651; Pub. L. 103–160, div. C, title XXXIII, § 3303(b), Nov. 30, 1993, 107 Stat. 1961; Pub. L. 103–337, div. A, title X, § 1070(c)(3), div. C, title XXXIII, § 3303, Oct. 5, 1994, 108 Stat. 2858, 3098.

Pub. L. 102–190, div. C, title XXXIII, § 3301, Dec. 5, 1991, 105 Stat. 1583; Pub. L. 102–484, div. C, title XXXIII, § 3308, Oct. 23, 1992, 106 Stat. 2653.

Pub. L. 102–172, title VIII, § 8094, Nov. 26, 1991, 105 Stat. 1196.

Pub. L. 101–189, div. C, title XXXIII, §§ 3301, 3302, Nov. 29, 1989, 103 Stat. 1685.

Pub. L. 100–456, div. A, title XV, § 1501, Sept. 29, 1988, 102 Stat. 2085.

Pub. L. 99–661, div. C, title II, §§ 3204, 3205, Nov. 14, 1986, 100 Stat. 4068.

Pub. L. 99–591, § 101(c) [title IX, § 9110], (m) [title V, § 519], Oct. 30, 1986, 100 Stat. 3341–82, 3341–120, 3341–308, 3341–326.

Pub. L. 99–500, § 101(c) [title IX, § 9110], (m) [title V, § 519], Oct. 18, 1986, 100 Stat. 1783–82, 1783–120, 1783–308, 1783–326.

Pub. L. 98–525, title IX, §§ 901, 902, Oct. 19, 1984, 98 Stat. 2573.

Pub. L. 97–377, title I, § 101(c) [title VII, § 799B], Dec. 21, 1982, 96 Stat. 1866.

Pub. L. 97–114, title VII, § 788, Dec. 29, 1981, 95 Stat. 1592.

Pub. L. 97–35, title II, § 201, Aug. 13, 1981, 95 Stat. 380.

AUTHORIZATION OF APPROPRIATIONS

Section 202 of Pub. L. 97–35 provided that:

''(a) Effective on October 1, 1981, there is authorized to be appropriated the sum of $535,000,000 for the acquisition of strategic and critical materials under section 6(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e(a)).

''(b) Any acquisition using funds appropriated under the authorization of subsection (a) shall be carried out in accordance with the provisions of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.).''

DISPOSAL OF GOVERNMENT-OWNED TIN SMELTER AT TEXAS CITY, TEXAS

Act June 22, 1956, ch. 426, 70 Stat. 329, directed Federal Facilities Corporation immediately to sell or lease Government-owned tin smelter at Texas City, Texas, and waste acid plant and other assets of Government's tin program, prescribed corporate powers of Corporation in regard to sale or lease, established a Tin Advisory Committee to consult with Corporation, established periods for receipt and negotiation of purchase proposals, and provided that if no contract for sale or lease was effected prior to Jan. 31, 1957, then smelter and other assets be reported as excess property for transfer and disposal in accordance with provisions of Federal Property and Administrative Services Act of 1949.

MAINTENANCE OF DOMESTIC TIN-SMELTING INDUSTRY; TRANSFER OF FUNCTIONS, ETC.

Act June 28, 1947, ch. 159, 61 Stat. 190, as amended June 29, 1948, ch. 722, 62 Stat. 1101; June 30, 1949, ch. 284, 63 Stat. 350; Aug. 21, 1950, ch. 766, 64 Stat. 468; July 30, 1953, ch. 282, title I, § 103, 67 Stat. 230; June 22, 1956, ch. 426, § 5(a), 70 Stat. 329, declared tin to be a highly strategic and critical material in short supply, directed that it was in the public interest that Congress make a thorough investigation on the advisability of the maintenance of a permanent tin-smelting industry and study the availability of adequate tin supplies, provided that the powers, functions, duties, and authority of the United States exercised by the Reconstruction Finance Corporation to buy, sell, and transport tin, and tin ore and concentrates, to improve, develop, maintain, and operate by lease or otherwise the Government-owned tin smelter at Texas City, Texas, to finance research in tin smelting and processing, and to do all other things necessary to the accomplishment of the foregoing continue in effect until Jan. 31, 1957, or until such earlier time as the Congress shall otherwise provide, and be exercised and performed by such officer, agency, or instrumentality of the United States as the President may designate, authorized diversification of tin-recovery facilities in the United States, and required the Reconstruction Finance Corporation to report to Congress on its activities not later than Dec. 31, 1947, and at the end of each six months thereafter.

FEDERAL FACILITIES CORPORATION; ABOLITION AND DISSOLUTION OF RECONSTRUCTION FINANCE CORPORATION AND FEDERAL FACILITIES CORPORATION

Ex. Ord. No. 10539, eff. June 22, 1954, 19 F.R. 3827, designated the Federal Facilities Corporation to perform and exercise the functions formerly performed and exercised by the Reconstruction Finance Corporation under act June 28, 1947, set out as a note above. The Reconstruction Finance Corporation, which was created by the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, was subsequently abolished by section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Facilities Corporation was, in turn, dissolved by Pub. L. 87–190, § 6, Aug. 30, 1961, 75 Stat. 419, effective Sept. 30, 1961, set out as a note under sections 1921 to 1929 of the Appendix to this title.

DISPOSAL OF GOVERNMENT-OWNED TIN SMELTER AT TEXAS CITY, TEXAS; CANCELLATION OF OBLIGATIONS

Cancellation of obligation of General Services Administration to Federal Facilities Corporation existing by virtue of section 5(b) of act June 22, 1956, set out as a note above, see section 4(b) of Pub. L. 87–190, Aug. 30, 1961, 75 Stat. 418, set out as a note under sections 1921 to 1929 of the Appendix to this title.

§ 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—

(1) competitive procedures shall be used in the acquisition and disposal of such materials; and

(2) efforts shall be made in the acquisition and disposal of such materials to avoid undue disruption of the usual markets of producers, processors, and consumers of such materials and to protect the United States against avoidable loss.

(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 materials 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.

(June 7, 1939, ch. 190, §6, as added Pub. L. 96–41, §2(a), July 30, 1979, 93 Stat. 321; amended Pub. L. 97–35, title II, §203(c), Aug. 13, 1981, 95 Stat. 382; Pub. L. 99–661, div. C, title II, §3207(b), Nov. 14, 1986, 100 Stat. 4069; Pub. L. 101–189, div. C, title XXXIII, §3314, Nov. 29, 1989, 103 Stat. 1688; Pub. L. 101–510, div. C, title XXXIII, §3301(a), (b), Nov. 5, 1990, 104 Stat. 1844; Pub. L. 102–190, div. C, title XXXIII, §3312, Dec. 5, 1991, 105 Stat. 1584; Pub. L. 103–337, div. C, title XXXIII, §3302, Oct. 5, 1994, 108 Stat. 3098; Pub. L. 104–106, div. A, title XV, §1502(e)(1), Feb. 10, 1996, 110 Stat. 509; Pub. L. 104–201, div. C, title XXXIII, §3312(b), (c), Sept. 23, 1996, 110 Stat. 2857; Pub. L. 105–85, div. C, title XXXIII, §3306, Nov. 18, 1997, 111 Stat. 2058; Pub. L. 106–65, div. A, title X, §1067(13), Oct. 5, 1999, 113 Stat. 775.)

PRIOR PROVISIONS

A prior section 98e, acts June 7, 1939, ch. 190, §6, 53 Stat. 812; May 28, 1941, ch. 135, 55 Stat. 206; July 23, 1946, ch. 590, 60 Stat. 598; Ex. Ord. No. 9809, eff. Dec. 12, 1946, 11 F.R. 14281; Ex. Ord. No. 9841, eff. Apr. 23, 1947, 12 F.R. 2645; June 30, 1949, ch. 288, title I, §105, 63 Stat. 381; 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. 90–608, §402, 82 Stat. 1194; Ex. Ord. No. 11725, §3, eff. June 29, 1973, 38 F.R. 17175, related to transfer of surplus materials to stock piles, prior to repeal by section 2(a) of Pub. L. 96–41. See section 98c(b) of this title.

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

AMENDMENTS

1999—Subsec. (d)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (b). Pub. L. 105–85, in first sentence, substituted ''strategic and critical materials from the stockpile shall be made in accordance with the next sentence'' for ''materials from the stockpile shall be made by formal advertising or competitive negotiation procedures''.

1996—Subsec. (d)(1). Pub. L. 104–201, §3312(b), substituted ''45 days'' for ''thirty days''.

Pub. L. 104–106, §1502(e)(1)(A), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (d)(2). Pub. L. 104–201, §3312(c), substituted ''45 days'' for ''thirty days''.

Pub. L. 104–106, §1502(e)(1)(B), substituted ''such congressional committees'' for ''the Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (a)(4). Pub. L. 103–337 inserted ''or technological obsolescence'' after ''deterioration''.

1991—Subsec. (a)(4). Pub. L. 102–190 inserted before semicolon ''or better material''.

1990—Subsec. (a)(3). Pub. L. 101–510, §3301(b)(1), substituted ''upgrading, refining,'' for ''refining'', inserted ''(notwithstanding any intermediate stockpile quantity established for such material)'' after ''stockpile'', and substituted ''storage, subsequent disposition, and immediate use in a national emergency'' for ''storage and subsequent disposition''.

Subsec. (c)(1). Pub. L. 101–510, § 3301(b)(2), inserted ''under subsection (a)(1) of this section'' after ''the acquisition'' and ''under subsection (a)(5) or (a)(6) of this section'' after ''the disposal''.

Subsec. (c)(2). Pub. L. 101–510, § 3301(b)(3), substituted ''(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)'' for '', the disposition of which is authorized by law,'' and ''of upgrading, refining'' for ''of refining''.

Subsec. (c)(3), (4). Pub. L. 101–510, § 3301(a), added par. (3) and redesignated former par. (3) as (4).

1989—Subsec. (b). Pub. L. 101–189, § 3314(1), inserted ''and'' at end of par. (1), substituted a period for ''; and'' at end of par. (2), and struck out par. (3) which read as follows: ''disposal of such materials shall be made for domestic consumption.''

Subsec. (d)(1). Pub. L. 101–189, § 3314(2), substituted ''paragraph (1) or (2)'' for ''paragraph (1), (2), or (3)''.

1986—Subsec. (a)(3). Pub. L. 99–661 substituted ''a form more'' for ''the form most''.

1981—Subsec. (a)(6). Pub. L. 97–35 inserted reference to section 98d(b) of this title.

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.

ACQUISITION OF DEPLETED URANIUM FOR NATIONAL DEFENSE STOCKPILE

Pub. L. 101–511, title VIII, § 8095, Nov. 5, 1990, 104 Stat. 1896, directed President, using funds available in National Defense Stockpile Transaction Fund, to acquire over a period of ten years from current domestic sources not less than thirty-six million pounds of depleted uranium to be held in National Defense Stockpile, prior to repeal by Pub. L. 102–172, title VIII, § 8027A, Nov. 26, 1991, 105 Stat. 1177.

§ 98e–1. Transferred

CODIFICATION

Section, act June 7, 1939, ch. 190, § 6A, as added Nov. 14, 1986, Pub. L. 99–661, div. C, title II, § 3202(a), 100 Stat. 4067; amended Dec. 4, 1987, Pub. L. 100–180, div. C, title II, § 3203(a), 101 Stat. 1246, which related to National Defense Stockpile Manager, was transferred to section 98h–7 of this title.

§ 98f. Special Presidential disposal authority

(a) Materials in the stockpile may be released for use, sale, or other disposition—

(1) on the order of the President, at any time the President determines the release of such materials is required for purposes of the national defense; and

(2) in time of war declared by the Congress or during a national emergency, on the order of any officer or employee of the United States designated by the President to have authority to issue disposal orders under this subsection, if such officer or employee determines that the release of such materials is required for purposes of the national defense.

(b) Any order issued under subsection (a) of this section shall be promptly reported by the President, or by the officer or employee issuing such order, in writing, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(June 7, 1939, ch. 190, § 7, as added Pub. L. 96–41, § 2(a), July 30, 1979, 93 Stat. 322; amended Pub. L. 104–106, div. A, title XV, § 1502(e)(2), Feb. 10, 1996, 110 Stat. 509; Pub. L. 106–65, div. A, title X, § 1067(13), Oct. 5, 1999, 113 Stat. 775.)

PRIOR PROVISIONS

A prior section 98f, acts June 7, 1939, ch. 190, § 7, 53 Stat. 812; July 23, 1946, ch. 590, 60 Stat. 599, related to investigations of domestic ores, minerals, and agriculture resources for purposes of development, etc., prior to repeal by section 2(a) of Pub. L. 96–41.

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

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

§ 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.

(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.

(June 7, 1939, ch. 190, §8, as added Pub. L. 96–41, §2(a), July 30, 1979, 93 Stat. 322; amended Pub. L. 101–189, div. C, title XXXIII, §3311, Nov. 29, 1989, 103 Stat. 1686.)

PRIOR PROVISIONS

A prior section 98g, act June 7, 1939, ch. 190, §8, as added July 23, 1946, ch. 590, 60 Stat. 600; amended 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. 90–608, §402, 82 Stat. 1194; Ex. Ord. No. 11725, §3, eff. June 29, 1973, 38 F.R. 17175, authorized appropriations for procurement, transportation, maintenance, rotation, storage, and refining or processing of materials acquired under this subchapter, prior to repeal by section 2(a) of Pub. L. 96–41. See section 98d(c) of this title.

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

AMENDMENTS

1989—Subsecs. (c), (d). Pub. L. 101–189 added subsecs. (c) and (d).

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of the Interior and functions of President under subsec. (b) of this section delegated to Secretary of Agriculture by section 1 of Ex. Ord. No. 12636, Feb. 25, 1988, 53 F.R. 6114, set out under section 98 of this title.

§ 98h. National Defense Stockpile Transaction Fund

(a) Establishment

There is established in the Treasury of the United States a separate fund to be known as the National Defense Stockpile Transaction Fund (hereinafter in this section referred to as the ''fund'').

(b) Fund operations

(1) All moneys received from the sale of materials in the stockpile under paragraphs (5) and (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.

(June 7, 1939, ch. 190, § 9, as added Pub. L. 96–41, § 2(a), July 30, 1979, 93 Stat. 323; amended Pub. L. 97–35, title II, § 203(d), Aug. 13, 1981, 95 Stat. 382; Pub. L. 99–661, div. C, title II, § 3203(a), Nov. 14, 1986, 100 Stat. 4067; Pub. L. 100–180, div. C, title II, § 3204, Dec. 4, 1987, 101 Stat. 1247; Pub. L. 101–189, div. C, title XXXIII, § 3312(b), Nov. 29, 1989, 103 Stat. 1688; Pub. L. 101–510, div. C, title XXXIII, § 3301(c), Nov. 5, 1990, 104 Stat. 1845; Pub. L. 102–190, div. C, title XXXIII, § 3311(a), Dec. 5, 1991, 105 Stat. 1584; Pub. L. 102–484, div. C, title XXXIII, § 3313, Oct. 23, 1992, 106 Stat. 2653; Pub. L. 103–160, div. C, title XXXIII, § 3313, Nov. 30, 1993, 107 Stat. 1962; Pub. L. 105–261, div. C, title XXXIII, § 3304, Oct. 17, 1998, 112 Stat. 2264.)

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. 105–261 added subpar. (J) and redesignated former subpars. (J) and (K) as (K) and (L), respectively.

1993—Subsec. (b)(2)(J), (K). Pub. L. 103–160, § 3313(a), added subpars. (J) and (K).

Subsec. (b)(4). Pub. L. 103–160, § 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.''

1992—Subsec. (b)(2)(A). Pub. L. 102–484, § 3313(a)(1), inserted '', maintenance, and disposal'' after ''acquisition'' and substituted ''section 98e(a)'' for ''section 98e(a)(1)''.

Subsec. (b)(2)(B). Pub. L. 102–484, § 3313(a)(2), substituted ''such acquisition, maintenance, and disposal'' for ''such acquisition''.

Subsec. (b)(2)(H), (I). Pub. L. 102–484, § 3313(b), added subpars. (H) and (I).

Subsec. (b)(4). Pub. L. 102–484, § 3313(c), added par. (4).

1991—Subsec. (b)(2)(G). Pub. L. 102–190 added subpar. (G).

1990—Subsec. (d). Pub. L. 101–510 added subsec. (d).

1989—Subsec. (b)(2)(F). Pub. L. 101–189 added subpar. (F).

1987—Subsec. (b)(2)(F). Pub. L. 100–180 struck out subpar. (F) which related to other reasonable requirements for management of stockpile.

1986—Subsec. (b)(1). Pub. L. 99–661, § 3203(a)(1), struck out ''Such moneys shall remain in the fund until appropriated.'' after ''covered into the fund.''

Subsec. (b)(2), (3). 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 98e(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.''

1981—Subsec. (b). Pub. L. 97–35 in par. (1) struck out provisions relating to moneys remaining in the fund at the end of the third fiscal year following the fiscal year in which received, and in par. (3) substituted provisions respecting funds remaining available until expended, for provisions relating to funds remaining available for a period of five fiscal years.

USE OF FUNDS FROM NATIONAL DEFENSE STOCKPILE TRANSACTION FUND TO MEET NATIONAL DEFENSE STOCKPILE GOALS AND SPECIFICATIONS IN EFFECT ON OCTOBER 1, 1984

Pub. L. 100–440, title V, § 518, Sept. 22, 1988, 102 Stat. 1748, directed that, no later than Oct. 1, 1989, Administrator of General Services, or any Federal officer assuming Administrator's responsibilities with respect to management of the stockpile, to use all funds authorized and appropriated before Jan. 1, 1985, from National Defense Stockpile Transaction Fund to evaluate, test, relocate, upgrade or purchase stockpile materials to meet National Defense Stockpile goals and specifications in effect on Oct. 1, 1984. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–202, § 101(m) [title V, § 519], Dec. 22, 1987, 101 Stat. 1329–390, 1329–417.

Pub. L. 99–500, § 101(m) [title V, § 520], Oct. 18, 1986, 100 Stat. 1783–308, 1783–326, and Pub. L. 99–591, § 101(m) [title V, § 520], Oct. 30, 1986, 100 Stat. 3341–308, 3341–326.

DEPOSIT OF FUNDS ACCRUING FROM NAVAL PETROLEUM RESERVES

Pub. L. 98–525, title IX, § 905, Oct. 19, 1984, 98 Stat. 2574, as amended by Pub. L. 99–145, title XVI, § 1611(a), Nov. 8, 1985, 99 Stat. 776, provided that: ''There shall be deposited into the National Defense Stockpile Transaction Fund established under section 9 of the Act (50 U.S.C. 98h) 30 percent of all money accruing to the United States during fiscal years 1985 and 1986 from lands in the naval petroleum and oil shale reserves (less amounts spent for exploration, development and operation of those reserves and related expenses during that period). Moneys deposited into the Fund under this subsection shall be deemed to have been covered into the Fund under section 9(b) of the Act.''

§ 98h–1. Advisory committees

(a) Membership

The President may appoint advisory committees composed of individuals with expertise relating to materials in the stockpile or with expertise in stockpile management to advise the President with respect to the acquisition, transportation, processing, refining, storage, security, maintenance, rotation, and disposal of such materials under this subchapter.

(b) Expenses

Each member of an advisory committee established under subsection (a) of this section while serving on the business of the advisory committee away from such member's home or regular place of business shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons intermittently employed in the Government service.

(c) Market Impact Committee

(1) The President shall appoint a Market Impact Committee composed of representatives from the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Energy, the Department of the Interior, the Department of State, the Department of the Treasury, and the Federal Emergency Management Agency, and such other persons as the President considers appropriate. The representatives from the Department of Commerce and the Department of State shall be Cochairmen of the Committee.

(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.

(June 7, 1939, ch. 190, §10, as added Pub. L. 96–41, §2(a), July 30, 1979, 93 Stat. 323; amended Pub. L. 102–484, div. C, title XXXIII, §3314, Oct. 23, 1992, 106 Stat. 2654.)

PRIOR PROVISIONS

A prior section 10 of act June 7, 1939, ch. 190, §10, was renumbered section 13 and is classified to section 98h–4 of this title.

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

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–484 added subsec. (c).

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.

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.

TERMINATION OF ADVISORY COMMITTEES

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 for 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.

ADVISORY COMMITTEE REGARDING OPERATION AND MODERNIZATION OF STOCKPILE

Section 3306 of Pub. L. 102–484 provided that:

''(a) APPOINTMENT.—Not later than March 15, 1993, the President shall appoint an advisory committee under section 10(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–1(a)) to make recommendations to the President concerning the operation and modernization of the National Defense Stockpile.

''(b) MEMBERSHIP.—The committee shall consist of members who have expertise regarding strategic and critical materials, including—

''(1) employees of Federal agencies (including the Department of Defense, the Department of State, the Department of Commerce, the Department of Energy, the Department of the Treasury, the Department of the Interior, and the Federal Emergency Management Agency);

''(2) representatives of mining, processing, and fabricating industries and consumers that would be affected by the acquisition of materials for the stockpile or the disposal of materials from the stockpile; and

''(3) other interested persons or representatives of interested organizations.''

§ 98h–2. Reports to Congress

(a) Not later than January 15 of each year, the President shall submit to the Congress an annual written report detailing operations under this subchapter. Each such report shall include—

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

(2) 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;

(3) information with respect to the activities by the Stockpile Manager to encourage the conservation, substitution, and development of strategic and critical materials within the United States;

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

(5) 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

(6) 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 of 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 98d(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.

(June 7, 1939, ch. 190, § 11, as added Pub. L. 96–41, § 2(a), July 30, 1979, 93 Stat. 324; amended Pub. L. 97–35, title II, § 203(e), Aug. 13, 1981, 95 Stat. 382; Pub. L. 99–661, div. C, title II, § 3207(a)(3), Nov. 14, 1986, 100 Stat. 4069; Pub. L. 100–180, div. C, title II, § 3205, Dec. 4, 1987, 101 Stat. 1247; Pub. L. 100–456, div. A, title XV, § 1503, Sept. 29, 1988, 102 Stat. 2086; Pub. L. 101–189, div. C, title XXXIII, § 3315, Nov. 29, 1989, 103 Stat. 1688; Pub. L. 102–190, div. C, title XXXIII, §§ 3311(b), 3313(a), Dec. 5, 1991, 105 Stat. 1584; Pub. L. 103–35, title II, § 204(d), May 31, 1993, 107 Stat. 103.)

PRIOR PROVISIONS

A prior section 11 of act June 7, 1939, ch. 190, formerly § 10, as added July 23, 1946, ch. 590, 60 Stat. 596; renumbered § 11, Pub. L. 92–156, title V, § 503(1), Nov. 17, 1971, 85 Stat. 427, 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

1993—Subsec. (a)(1). Pub. L. 103–35 substituted ''fiscal year'' for ''six-month period''.

1991—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)(2). Pub. L. 102–190, § 3313(a)(3), substituted ''fiscal year'' for ''period''.

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

Subsec. (b)(1). Pub. L. 102–190, § 3311(b)(1), designated first sentence of subsec. (b) relating to submission of report as par. (1).

Subsec. (b)(2). Pub. L. 102–190, § 3311(b), designated second sentence of subsec. (b) relating to contents of report as par. (2) and inserted at end ''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.''

Subsec. (b)(3). Pub. L. 102–190, § 3311(b)(1), designated third sentence of subsec. (b) relating to resubmission of proposed expenditures and disposals not obligated or executed as par. (3).

1989—Subsec. (a)(5). Pub. L. 101–189 substituted ''made to the fund, and obligations to be made from the fund,'' for ''made from the fund''.

1988—Subsec. (a)(3) to (6). Pub. L. 100–456, § 1503(a), added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

Subsec. (b). Pub. L. 100–456, § 1503(b), substituted ''the next fiscal year'' for ''such fiscal year'' and ''all planned expenditures from the National Defense Stockpile Transaction Fund'' for ''planned expenditures for acquisition of strategic and critical materials'' and inserted at end ''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 98d(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.''

1987—Subsec. (b). Pub. L. 100–180 substituted ''Not later than February 15 of each year, the President'' for ''The President'' and struck out ''each year, at the time that the Budget is submitted to Congress pursuant to section 1105 of title 31 for the next fiscal year,'' after ''Congress''.

1986—Subsec. (b). Pub. L. 99–661 substituted ''each year, at the time that the Budget is submitted to Congress pursuant to section 1105 of title 31 for the next fiscal year,'' for each year with the Budget submitted to Congress pursuant to section 201a of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a)), for the next fiscal year''.

1981—Pub. L. 97–35 designated existing provisions as subsec. (a) and added subsec. (b).

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.

§ 98h–3. Definitions

For the purposes of this subchapter:

(1) The term ''strategic and critical materials'' means materials that (A) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national emergency, and (B) are not found or produced in the United States in sufficient quantities to meet such need.

(2) The term ''national emergency'' means a general declaration of emergency with respect to the national defense made by the President or by the Congress.

(June 7, 1939, ch. 190, § 12, as added Pub. L. 96–41, § 2(a), July 30, 1979, 93 Stat. 324.)

§ 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.

(June 7, 1939, ch. 190, § 13, formerly § 10, as added Pub. L. 92–156, title V, § 503(2), Nov. 17, 1971, 85 Stat. 427; renumbered § 13, Pub. L. 96–41, § 2(b)(1), July 30, 1979, 93 Stat. 324; amended Pub. L. 100–180, div. C, title II, § 3206(b), (c), Dec. 4, 1987, 101 Stat. 1247; Pub. L. 100–418, title I, § 1214(*o*), Aug. 23, 1988, 102 Stat. 1159; Pub. L. 104–201, div. C, title XXXIII, § 3313, Sept. 23, 1996, 110 Stat. 2857.)

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 3001 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.

(June 7, 1939, ch. 190, § 14, as added Pub. L. 100–180, div. C, title II, § 3202(c), Dec. 4, 1987, 101 Stat. 1246; amended Pub. L. 102–190, div. C, title XXXIII, § 3313(b)(1), (2), Dec. 5, 1991, 105 Stat. 1585; Pub. L. 103–160, div. C, title XXXIII, § 3314, Nov. 30, 1993, 107 Stat. 1962; Pub. L. 104–201, div. C, title XXXIII, § 3313(a), Sept. 23, 1996, 110 Stat. 2856.)

AMENDMENTS

1996—Subsecs. (b) to (e). Pub. L. 104–201 added subsecs. (b) to (d), redesignated former subsec. (c) as (e), and

struck out former subsec. (b) which related to national emergency planning assumptions set forth in reports required under this section.

1993—Subsec. (b). Pub. L. 103–160 struck out before period at end of first sentence '', based upon total mobilization of the economy of the United States for a sustained conventional global war for a period of not less than three years'' and inserted after first sentence ''Before October 1, 1994, such assumptions shall be based upon the total mobilization of the economy of the United States for a sustained conventional global war for a period of not less than three years. On and after October 1, 1994, such assumptions shall be based on an assumed national emergency involving military conflict that necessitates an expansion of the Armed Forces together with a significant mobilization of the economy of the United States.''

1991—Pub. L. 102–190, § 3313(b)(2), substituted ''Biennial'' for ''Annual'' in section catchline.

Subsec. (a). Pub. L. 102–190, § 3313(b)(1), in introductory provisions, substituted ''Not later than January 15 of every other year, the Secretary'' for ''The Secretary'' and ''a report'' for ''an annual report'' and struck out ''shall be submitted with the annual report submitted under section 98h–2(b) of this title and'' before ''shall include''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 3311(c) of Pub. L. 104–201, set out as a note under section 98a of this title.

INITIAL REPORT DUE DATE

Section 3313(b)(3) of Pub. L. 102–190 provided that: ''The first report required by section 14(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–5(a)), as amended by paragraph (1) shall be submitted not later than January 15, 1993.''

§ 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.

(June 7, 1939, ch. 190, § 15, as added Pub. L. 101–189, div. C, title XXXIII, § 3312(a), Nov. 29, 1989, 103 Stat. 1687.)

§ 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.

(June 7, 1939, ch. 190, § 16, formerly § 6A, as added Pub. L. 99–661, div. C, title II, § 3202(a), Nov. 14, 1986, 100 Stat. 4067; amended Pub. L. 100–180, div. C, title II, § 3203(a), Dec. 4, 1987, 101 Stat. 1246; renumbered § 16 and amended Pub. L. 101–189, div. C, title XXXIII, § 3313, Nov. 29, 1989, 103 Stat. 1688; Pub. L. 102–190, div. C, title XXXIII, § 3314, Dec. 5, 1991, 105 Stat. 1585.)

CODIFICATION

Section was classified to section 98e–1 of this title prior to its renumbering by Pub. L. 101–189.

AMENDMENTS

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 subsecs. (a) and (b) and adding subsecs. (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 §16] of the Strategic and Critical Materials Stock Piling Act [this section], as amended by subsection (a), 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 3202(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.

§ 98i. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1570

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)

[title VII, § 712], Dec. 21, 1982, 96 Stat. 1833, 1851, prohibited use of funds available to Department of Defense agencies for acquisition, construction, or operation of certain scrap-processing facilities, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:

Dec. 29, 1981, Pub. L. 97–114, title VII, § 712, 95 Stat. 1580.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 713, 94 Stat. 3082.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 713, 93 Stat. 1154.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 813, 92 Stat. 1246.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 812, 91 Stat. 901.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 712, 90 Stat. 1293.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 712, 90 Stat. 170.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 812, 88 Stat. 1226.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 712, 87 Stat. 1040.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 712, 86 Stat. 1198.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 712, 85 Stat. 729.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 812, 84 Stat. 2032.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 612, 83 Stat. 481.

Oct. 17, 1968, Pub. L. 90–580, title V, § 511, 82 Stat. 1131.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 611, 81 Stat. 244.

Oct. 15, 1966, Pub. L. 89–687, title VI, § 611, 80 Stat. 992.

Sept. 29, 1965, Pub. L. 89–213, title VI, § 611, 79 Stat. 875.

Aug. 19, 1964, Pub. L. 88–446, title V, § 511, 78 Stat. 476.

Oct. 17, 1963, Pub. L. 88–149, title V, § 511, 77 Stat. 265.

Aug. 9, 1962, Pub. L. 87–577, title V, § 511, 76 Stat. 329.

Aug. 17, 1961, Pub. L. 87–144, title VI, § 611, 75 Stat. 377.

July 7, 1960, Pub. L. 86–601, title V, § 511, 74 Stat. 351.

Aug. 18, 1959, Pub. L. 86–166, title V, § 611, 73 Stat. 380.

Aug. 22, 1958, Pub. L. 85–724, title VI, § 611, 72 Stat. 725.

Aug. 2, 1957, Pub. L. 85–117, title VI, § 612, 71 Stat. 325.

July 2, 1956, ch. 488, title VI, § 612, 70 Stat. 469.

July 13, 1955, ch. 358, title VI, § 615, 69 Stat. 317.

June 30, 1954, ch. 432, title VII, § 715, 68 Stat. 352.

CHAPTER 6—WILLFUL DESTRUCTION, ETC., OF WAR OR NATIONAL-DEFENSE MATERIAL

§§ 101 to 106. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 101, acts Apr. 20, 1918, ch. 59, § 1, 40 Stat. 533; Nov. 30, 1940, ch. 926, 54 Stat. 1220; Dec. 24, 1942, ch. 824, 56 Stat. 1087; 1946 Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, related to definition of war terms. See section 2151 of Title 18, Crimes and Criminal Procedure.

Section 102, act Apr. 20, 1918, ch. 59, § 2, 40 Stat. 534, related to destruction or injury of war material in time of war. See section 2153 of Title 18.

Section 103, act Apr. 20, 1918, ch. 59, § 3, 40 Stat. 534, related to making or causing to be made defective war material. See section 2154 of Title 18.

Section 104, act Apr. 20, 1918, ch. 59, § 4, as added Nov. 30, 1940, ch. 926, 54 Stat. 1220; amended Aug. 21, 1941, ch. 388, 55 Stat. 655, related to definition of national-defense terms. See section 2151 of Title 18.

Section 105, act Apr. 20, 1918, ch. 59, § 5, as added Nov. 30, 1940, ch. 926, 54 Stat. 1220, related to destruction or injury of national-defense materials. See section 2155 of Title 18.

Section 106, act Apr. 20, 1918, ch. 59, § 6, as added Nov. 30, 1940, ch. 926, 54 Stat. 1220, related to making or causing to be made defective national-defense material. See section 2156 of Title 18.

EFFECTIVE DATE OF REPEAL

Repeal of sections 101 to 106 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 7—INTERFERENCE WITH HOMING PIGEONS OWNED BY UNITED STATES

§§ 111 to 113. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

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

§§ 121 to 144. Repealed. Pub. L. 91–452, title XI, § 1106(a), Oct. 15, 1970, 84 Stat. 960

Section 121, acts Oct. 6, 1917, ch. 83, § 1, 40 Stat. 385; Dec. 26, 1941, ch. 633, § 2, 55 Stat. 863, defined ''explosive'', ''explosives'', ''ingredients'', ''person'', and ''Director''. See section 841 of Title 18, Crimes and Criminal Procedure.

Section 122, acts Oct. 6, 1917, ch. 83, § 2, 40 Stat. 385; Dec. 26, 1941, ch. 633, § 2, 55 Stat. 864, related to unauthorized manufacture, distribution, possession, acquisition, etc., of explosives or ingredients. See section 842 of Title 18.

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, § 8(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 843 of Title 18.

Section 125, acts Oct. 6, 1917, ch. 83, § 2, 40 Stat. 385; Dec. 26, 1941, ch. 633, § 2, 55 Stat. 863, related to applicability of prohibitory provisions of this chapter.

Section 126, acts Oct. 6, 1917, ch. 83, § 5, 40 Stat. 386; Dec. 26, 1941, ch. 633, § 2, 55 Stat. 864, required licensees to keep records of disposition of explosives or ingredients. See section 843 of Title 18.

Section 127, acts Oct. 6, 1917, ch. 83, § 6, 40 Stat. 386; Dec. 26, 1941, ch. 633, § 2, 55 Stat. 865, authorized issuance of licenses. See section 843 of Title 18.

Section 128, acts Oct. 6, 1917, ch. 83, § 7, 40 Stat. 386; Dec. 26, 1941, ch. 633, § 2, 55 Stat. 865, set forth procedure for issuance of licenses and fees for such licenses.

Section 129, acts Oct. 6, 1917, ch. 83, § 8, 40 Stat. 386; Dec. 26, 1941, ch. 633, § 2, 55 Stat. 865; Ex. Ord. No. 9287, eff. Dec. 24, 1942, 7 F.R. 10897, provided for term of license, qualifications of applicants for licenses, and revocation of license. See section 843 of Title 18.

Section 130, acts Oct. 6, 1917, ch. 83, §9, 40 Stat. 386; Dec. 26, 1941, ch. 633, §2, 55 Stat. 866, set forth contents of applications for licenses. See section 843 of Title 18.

Section 131, acts Oct. 6, 1917, ch. 83, §10, 40 Stat. 387; Dec. 26, 1941, ch. 633, §2, 55 Stat. 866, required licensee or applicant to furnish information on request of Director or his authorized representative. See section 843 of Title 18.

Section 132, acts Oct. 6, 1917, ch. 83, §11, 40 Stat. 387; Dec. 26, 1941, ch. 633, §2, 55 Stat. 867, related to false representations as to required license.

Section 133, acts Oct. 6, 1917, ch. 83, §12, 40 Stat. 387; Dec. 26, 1941, ch. 633, §2, 55 Stat. 867, related to markings on manufacturing or storage premises for explosives.

Section 134, act July 1, 1918, ch. 113, 40 Stat. 671, related to cancellation of licenses for violations of law. See section 844 of Title 18.

Section 135, acts Oct. 6, 1917, ch. 83, §13, 40 Stat. 388; Dec. 26, 1941, ch. 633, §2, 55 Stat. 867, related to exclusion of public from manufacturing or storage premises for explosives and discharge of firearms, etc., on such premises.

Section 136, acts Oct. 6, 1917, ch. 83, §14, 40 Stat. 388; Dec. 26, 1941, ch. 633, §2, 55 Stat. 867, authorized investigations by Director of explosions and fires involving explosives or ingredients of explosives.

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 under supervision of Secretary of the Interior and cooperation of other agencies with Director in administration and enforcement of this chapter.

Section 138, acts Oct. 6, 1917, ch. 83, §16, 40 Stat. 388; Dec. 26, 1941, ch. 633, §2, 55 Stat. 868; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972, authorized employment of personnel for administration of this chapter.

Section 139, acts Oct. 6, 1917, ch. 83, §17, 40 Stat. 388; Dec. 26, 1941, ch. 633, §2, 55 Stat. 868, prohibited any officer, employee, or licensing agent from divulging any information obtained in course of his duties under this chapter.

Section 140, acts Oct. 6, 1917, ch. 83, §18, 40 Stat. 388; Dec. 26, 1941, ch. 633, §2, 55 Stat. 868, authorized Director to issue rules and regulations. See section 847 of Title 18.

Section 141, acts Oct. 6, 1917, ch. 83, §19, 40 Stat. 388; Dec. 26, 1941, ch. 633, §2, 55 Stat. 868, set forth penalties for violations of this chapter. See section 844 of Title 18.

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 143, act Oct. 6, 1917, ch. 83, §21, 40 Stat. 389, related to agencies available for enforcement of provisions of this chapter.

Section 144, act 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. Omitted

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, set out as a note under 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. See section 2451 et seq. of Title 42.

Section 151, acts Mar. 3, 1915, ch. 83, 38 Stat. 930; Mar. 2, 1929, ch. 482, 45 Stat. 1451; June 23, 1938, ch. 601, §1107(e), 52 Stat. 1027; 1940 Reorg. Plan No. IV, §7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501; May 25, 1948, ch. 335, §1, 62 Stat. 266; Aug. 10, 1949, ch. 412, §12(a), 63 Stat. 591; Aug. 8, 1950, ch. 645, §4, 64 Stat. 419; June 3, 1954, ch. 254, 68 Stat. 170, established National Advisory Committee for Aeronautics, provided for its composition, prescribed compensation of members and duties of Committee, and required reports to Congress.

Section 151a, act Mar. 2, 1929, ch. 482, 45 Stat. 1451, was incorporated in section 151 of this title.

Section 151b, act Aug. 8, 1950, ch. 645, §1, 64 Stat. 418, related to functions of Committee.

Section 151c, act Aug. 8, 1950, ch. 645, §2, 64 Stat. 418, related to transfer of supplies to Committee.

Section 151d, act Aug. 8, 1950, ch. 645, §3, 64 Stat. 418, related to employment of aliens.

Section 151e, act Aug. 8, 1950, ch. 645, §6, 64 Stat. 419, related to availability of appropriations.

Section 151f, act Aug. 8, 1950, ch. 645, §7, 64 Stat. 419, related to prosecution of projects.

§§ 152, 153. Repealed. May 25, 1948, ch. 335, §3(a), (b), 62 Stat. 267

Section 152, act July 1, 1918, ch. 113, 40 Stat. 650, as amended July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501, related to office space for Advisory Committee.

Section 153, act Mar. 3, 1915, ch. 83, 38 Stat. 930, related to annual reports.

§ 154. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1114

Section, act Apr. 22, 1926, ch. 171, 44 Stat. 314, related to purchases and services.

§ 155. Repealed. May 25, 1948, ch. 335, § 3(c), 62 Stat. 267

Section, act Apr. 22, 1926, ch. 171, 44 Stat. 314, related to Langley Memorial Aeronautical Laboratory.

§§ 156, 157. Omitted

CODIFICATION

Section 156, acts Apr. 18, 1940, ch. 107, §1, 54 Stat. 134; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972, authorized National Advisory Committee for Aeronautics to pay compensation of a retired officer of the Army or Navy performing service for Committee. See note set out under sections 151 to 151f of this title.

Section 157, which related to transfer of aircraft, supplies, and equipment by Army and Navy to National Advisory Committee for Aeronautics, was from appropriation acts July 30, 1947, ch. 359, title I, §101, 61 Stat. 599; Apr. 20, 1948, ch. 219, title I, §101, 62 Stat. 188; Aug. 24, 1949, ch. 506, title I, §101, 63 Stat. 646; Sept. 6, 1950, ch. 896, ch. VIII, title I, §101, 64 Stat. 711, and was not repeated in the Independent Offices Appropriation Act, 1952, act Aug. 31, 1951, ch. 376, 65 Stat. 268. Section was formerly classified to section 246 of former Title 49, Transportation.

§§ 158 to 159. Transferred

CODIFICATION

Section 158, act Aug. 1, 1947, ch. 433, §1(b), (c), as added July 13, 1949, ch. 332, §1, 63 Stat. 410, related to professional and scientific service on the Committee and was transferred to section 1161 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.

Section 158a, act Aug. 1, 1947, ch. 433, §2, 61 Stat. 715, related to classification of positions and appointments and was transferred to section 1162 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.

Section 159, acts Aug. 1, 1947, ch. 433, §3, 61 Stat. 715; July 13, 1949, ch. 332, §2, 63 Stat. 411, related to reports

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. 89–554, Sept. 6, 1966, 80 Stat. 378, and reenacted as section 3104(c) of Title 5, Government Organization and Employees.

§ 160. Omitted

CODIFICATION

Section, which was from acts Aug. 24, 1949, ch. 506, title I, § 101, 63 Stat. 646; Sept. 6, 1950, ch. 896, ch. VIII, title I, § 101, 64 Stat. 711, and prior appropriation acts, related to employment of aliens, and was not repeated in the Independent Offices Appropriation Act, 1952, act Aug. 31, 1951, ch. 376, 65 Stat. 268.

§§ 160a to 160f. Repealed. Pub. L. 85–707, § 21(b)(5), July 7, 1958, 72 Stat. 337

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.

Section 160f, acts Apr. 11, 1950, ch. 86, § 6, 64 Stat. 43; May 6, 1954, ch. 183, 68 Stat. 78; Mar. 17, 1958, Pub. L. 85–349, 72 Stat. 48, related to limitation on government expenditure.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 21(a) of Pub. L. 85–507.

CHAPTER 10—HELIUM GAS

Sec.
161 to 166. Omitted or Repealed.
167. Definitions.
167a. Authority of Secretary.
167b. Storage, transportation, and withdrawal of crude helium.
167c. Fees for storage, transportation, and withdrawal.
167d. Sale of helium.
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167i. Exclusion from Natural Gas Act provisions.
167j. Land conveyance in Potter County, Texas.
167k. Violations; penalties.
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167m. Report on helium.
167n. Repealed.

§§ 161 to 164. Omitted

CODIFICATION

Act Mar. 3, 1925, ch. 426, 43 Stat. 1110, as completely amended, renumbered, and revised by Pub. L. 86–777, Sept. 13, 1960, 74 Stat. 918, is classified to section 167 et seq. of this title.

Section 161, acts Mar. 3, 1925, ch. 426, § 1, 43 Stat. 1110; Mar. 3, 1927, ch. 355, 44 Stat. 1387; Sept. 1, 1937, ch. 895, 50 Stat. 885, authorized Secretary of the Interior to acquire and reserve helium-gas lands and to produce and store helium gas. See section 3 of act Mar. 3, 1925, as amended by Pub. L. 86–777, which is classified to section 167a of this title.

Section 162, acts Feb. 12, 1925, ch. 225, title I, 43 Stat. 908; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501, authorized Navy Department to acquire helium-gas lands and to produce and experiment with helium gas.

Section 163, acts Mar. 3, 1925, ch. 426, § 2, 43 Stat. 1111; Mar. 3, 1927, ch. 355, 44 Stat. 1387; Sept. 1, 1937, ch. 895, 50 Stat. 886, authorized Bureau of Mines to produce helium gas. See section 4 of act Mar. 3, 1925, as amended by Pub. L. 86–777, which is classified to section 167b of this title.

Section 164, acts Mar. 3, 1925, ch. 426, § 3, 43 Stat. 1111; Mar. 3, 1927, ch. 355, 44 Stat. 1387; Sept. 1, 1937, ch. 895, 50 Stat. 886, 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 167d of this title.

§ 165. Repealed. Aug. 26, 1954, ch. 937, title V, § 542(a)(13), 68 Stat. 861

Section, acts Mar. 3, 1925, ch. 426, § 4, 43 Stat. 1111; Mar. 3, 1927, ch. 355, 44 Stat. 1388; Sept. 1, 1937, ch. 895, 50 Stat. 887, related to exportation of helium gas. See section 2778 of Title 22, Foreign Relations and Intercourse.

§ 166. Omitted

Section, acts Mar. 3, 1925, ch. 426, § 5, 43 Stat. 1111; Mar. 3, 1927, ch. 355, 44 Stat. 1388; Sept. 1, 1937, ch. 895, 50 Stat. 887; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501, authorized Secretaries of Army and Navy to designate representatives to cooperate with Department of the Interior to effectuate the purposes of this chapter, and gave them the right of access to plants, data, and accounts. See section 7 of act Mar. 3, 1925, as amended by Pub. L. 86–777, which is classified to section 167e of this title.

§ 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.

(Mar. 3, 1925, ch. 426, § 2, as added Pub. L. 86–777, § 2, Sept. 13, 1960, 74 Stat. 918.)

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 1996 AMENDMENT

Pub. L. 104–273, § 1, Oct. 9, 1996, 110 Stat. 3315, provided that: ''This Act [amending sections 167a to 167d, 167f, 167j, and 167m of this title] may be cited as the 'Helium Privatization Act of 1996'.''

SHORT TITLE OF 1960 AMENDMENT

Section 1 of Pub. L. 86–777 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

Pub. L. 106–113, div. B, §1000(a)(3) [title I, §112], Nov. 29, 1999, 113 Stat. 1535, 1501A–157, provided that:

''(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(i)(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:

Pub. L. 105–277, div. A, §101(e) [title I, §112], Oct. 21, 1998, 112 Stat. 2681–231, 2681–254.

Pub. L. 105–83, title I, §113, Nov. 14, 1997, 111 Stat. 1562.

§ 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.

(4) 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.

(Mar. 3, 1925, ch. 426, §3, as added Pub. L. 86–777, §2, Sept. 13, 1960, 74 Stat. 918; amended Pub. L. 104–273, §3, Oct. 9, 1996, 110 Stat. 3315.)

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 the Federal Property and Administrative Services Act of 1949.[1]

(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.

(Mar. 3, 1925, ch. 426, § 4, as added Pub. L. 86–777, § 2, Sept. 13, 1960, 74 Stat. 920; amended Pub. L. 104–273, § 3, Oct. 9, 1996, 110 Stat. 3316.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (c)(2), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 4 of act Mar. 3, 1925, related to exportation of helium gas and was classified to section 165 of this title, prior to repeal by act Aug. 26, 1954, ch. 937, title V, § 542(a)(13), 68 Stat. 861.

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.

§ 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.

(Mar. 3, 1925, ch. 426, § 5, as added Pub. L. 86–777, § 2, Sept. 13, 1960, 74 Stat. 920; amended Pub. L. 104–273, § 3, Oct. 9, 1996, 110 Stat. 3317.)

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,

[1] See References in Text note below.

and in subsec. (d) relating to suspension of licenses and reacquisition 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, 1995.

(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 the Secretary deems necessary 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 such 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.

(Mar. 3, 1925, ch. 426, § 6, as added Pub. L. 86–777, § 2, Sept. 13, 1960, 74 Stat. 921; amended Pub. L. 104–273, § 4, Oct. 9, 1996, 110 Stat. 3317.)

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 167j of this chapter, to acquire and construct helium plants and facilities; and

''(3) Within twenty-five years from September 13, 1960, unless the Secretary determines that said period should be extended for not more than ten years, all funds borrowed, as provided in section 167j 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 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.

(Mar. 3, 1925, ch. 426, § 7, as added Pub. L. 86–777, § 2, Sept. 13, 1960, 74 Stat. 921.)

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.

(Mar. 3, 1925, ch. 426, § 8, as added Pub. L. 86–777, § 2, Sept. 13, 1960, 74 Stat. 922; amended Pub. L. 104–273, § 5, Oct. 9, 1996, 110 Stat. 3318.)

AMENDMENTS

1996—Pub. L. 104–273 amended section generally. Prior to amendment, section related to condemnation proceedings under Federal helium refining program.

§ 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.

(Mar. 3, 1925, ch. 426, § 9, as added Pub. L. 86–777, § 2, Sept. 13, 1960, 74 Stat. 922.)

§ 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 to 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 158 of title 28, and to the provisions of chapter 7 of title 5.

(Mar. 3, 1925, ch. 426, § 10, as added Pub. L. 86–777, § 2, Sept. 13, 1960, 74 Stat. 922.)

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.

In subsec. (b), ''chapter 158 of title 28'' substituted for ''the Act of December 29, 1950 (64 Stat. 1129; 5 U.S.C. 1031–1042), as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, section 4(e) of which enacted chapter 158 of Title 28, Judiciary and Judicial Procedure.

§ 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.

(Mar. 3, 1925, ch. 426, §11, as added Pub. L. 86–777, §2, Sept. 13, 1960, 74 Stat. 922.)

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, (some times known as the G.D. Landis pasture) Potter County, Texas, located by certificate No. 1/39 and evidenced by letters patents 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 0 degrees 12 minutes East with the West line of said Section 59, 999.4 varas to the Northeast corner of the South 160 acres of East half of Section 78;

Thence, North 89 degrees 47 minutes West with the North line of the South 150 acres of the East half, 956.8 varas to a point in the East line of the West half Section 78;

Thence, North 0 degrees 10 minutes West with the East line of the West half 999.4 varas to a stone 18 x 14 x 3 inches in the middle of the South line of Section 79;

Thence, South 89 degrees 47 minutes East 965 varas 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 89 degrees 47 minutes East 965.8 varas to a point in the East line 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.

(Mar. 3, 1925, ch. 426, §12, as added Pub. L. 86–777, §2, Sept. 13, 1960, 74 Stat. 923; amended Pub. L. 104–273, §6, Oct. 9, 1996, 110 Stat. 3318.)

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 terms 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 by imprisonment for not more than twenty years, or both.

(Mar. 3, 1925, ch. 426, §13, as added Pub. L. 86–777, §2, Sept. 13, 1960, 74 Stat. 923.)

§ 167*l*. 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.

(Mar. 3, 1925, ch. 426, §14, as added Pub. L. 86–777, §2, Sept. 13, 1960, 74 Stat. 923.)

§ 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.

(Mar. 3, 1925, ch. 426, §15, as added Pub. L. 86–777, §2, Sept. 13, 1960, 74 Stat. 923; amended Pub. L. 104–273, §7, Oct. 9, 1996, 110 Stat. 3319.)

AMENDMENTS

1996—Pub. L. 104–273 amended section generally. Prior to amendment, section related to individual enterprise in developing helium.

§ 167n. Repealed. Pub. L. 105–362, title IX, § 901(q), Nov. 10, 1998, 112 Stat. 3291

Section, act Mar. 3, 1925, ch. 426, §16, as added Pub. L. 86–777, §2, Sept. 13, 1960, 74 Stat. 923, directed Secretary of the Interior to make annual reports to Congress.

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

§§ 171, 171–1. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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 2663 of Title 10, Armed Forces.

Section 171–1, act Oct. 25, 1951, ch. 563, §101, 65 Stat. 641, granted certain condemnation authority to Secretary of Navy. See sections 2663 and 2668 of Title 10.

§ 171a. Omitted

CODIFICATION

Section, act July 2, 1917, ch. 35, §2, as added Mar. 27, 1942, ch. 199, title II, §201, 56 Stat. 177, related to acquisition of real property during war, and terminated on Dec. 28, 1945 by act Mar. 27, 1942, ch. 199, title II, §202, as added Dec. 28, 1945, ch. 590, §1(a), 59 Stat. 658.

§ 171b. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1570

Section, acts Aug. 3, 1956, ch. 939, title IV, §406, 70 Stat. 1015; Aug. 20, 1958, Pub. L. 85–685, title V, §510, 72 Stat. 662, related to acquisition of land not exceeding $5,000 in cost.

§§ 172, 173. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 172, act July 9, 1918, ch. 143, subch. XV §8, 40 Stat. 888, related to acquisition of property for production of lumber. See section 2665 of Title 10, Armed Forces.

Section 173, act Apr. 28, 1904, ch. 1762, §1, 33 Stat. 497, related to purchase of land for quarters and barracks in addition to sites for fortifications.

§ 174. Omitted

CODIFICATION

Section, act Aug. 18, 1890, ch. 797, §1, 26 Stat. 316, provided that nothing contained in former section 171 of this title should be construed to authorize an expenditure or involve the Government in any contract for future payment of money in excess of sums appropriated therefor.

§ 175. Transferred

CODIFICATION

Section, R.S. §355; June 28, 1930, ch. 710, 46 Stat. 828; Feb. 1, 1940, ch. 18, 54 Stat. 19; Oct. 9, 1940, ch. 793, 54 Stat. 1083; Sept. 1, 1970, Pub. L. 91–393, §1, 84 Stat. 835, which related to approval of title prior to Federal land purchases, payment of title expenses, application to Tennessee Valley Authority, and Federal jurisdiction over acquisitions, was transferred to section 255 of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as sections 3111 and 3112 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as amended by Pub. L. 108–178, §2(a)(8), Dec. 15, 2003, 117 Stat. 2638, 2640.

§ 176. Omitted

CODIFICATION

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.

§§ 177 to 179. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat 641

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, 1898, 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, 191c. Repealed.
192. Seizure and forfeiture of vessel; fine and imprisonment.

[1] So in original. The comma probably should not appear.

Sec.
193. Repealed.
194. Enforcement provisions.
195. Definitions.
196. Emergency foreign vessel acquisition; purchase or requisition of vessels lying idle in United States waters.
197. Voluntary purchase or charter agreements.
198. Requisitioned vessels.

§ 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 presents urgent circumstances requiring an immediate Federal response, the Secretary of Transportation may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, 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 specially 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 rights and obligations of the United States, may take for such purposes full possession and control of such vessels 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.[1]

(June 15, 1917, ch. 30, title II, §1, 40 Stat. 220; Aug. 9, 1950, ch. 656, §1, 64 Stat. 427; Sept. 26, 1950, ch. 1049, §2(b), 64 Stat. 1038; Pub. L. 89–670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938; Pub. L. 96–70, title III, §3302(a), Sept. 27, 1979, 93 Stat. 498; Pub. L. 104–208, div. C, title VI, §649, Sept. 30, 1996, 110 Stat. 3009–711; Pub. L. 108–293, title II, §223, Aug. 9, 2004, 118 Stat. 1040.)

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. 18, 1950, 15 F.R. 7005.

[1] See References in Text note below.

REGULATIONS—WORLD WAR II

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 first paragraph of 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. 10289, Sept. 17, 1951, 16 F.R. 9499, 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. 8843, 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 and the laws of the United 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.*) [50 U.S.C. 1621, 1631], and section 301 of title 3, United States Code, find and do hereby proclaim that a national emergency does exist 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 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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 Jan. 15, 2009, 74 F.R. 3959, 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 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. In July 1996 and on subsequent occasions, the Cuban government stated its intent to forcefully defend its sovereignty against any U.S.-registered vessels or aircraft that might enter Cuban terri-

torial waters or airspace while involved in a flotilla or peaceful protest. Since these events, the Cuban government has not demonstrated that it will refrain from the future use of reckless and excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. On February 26, 2004, by Proclamation 7757 [set out below], the scope of the national emergency was expanded in order to deny monetary and material support to the repressive Cuban government, which had 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 United States Interests Section. Further, Cuba's most senior officials repeatedly asserted 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. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(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 and expanded by Proclamation 7757.

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

GEORGE W. BUSH.

Prior continuations of national emergency declared by Proc. No. 6867 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. 26, 2007, 72 F.R. 9231.

Notice of President of the United States, dated Jan. 10, 2006, 71 F.R. 2133.

Notice of President of the United States, dated Feb. 18, 2005, 70 F.R. 8919.

Notice of President of the United States, dated Feb. 26, 2004, 69 F.R. 9513.

Notice of President of the United States, dated Feb. 27, 2003, 68 F.R. 9849.

Notice of President of the United States, dated Feb. 26, 2002, 67 F.R. 9387.

Notice of President of the United States, dated Feb. 27, 2001, 66 F.R. 12841.

Notice of President of the United States, dated Feb. 25, 2000, 65 F.R. 10929.

Notice of President of the United States, dated Feb. 24, 1999, 64 F.R. 9903.

Notice of President of the United States, dated Feb. 25, 1998, 63 F.R. 9923.

Notice of President of the United States, dated Feb. 27, 1997, 62 F.R. 9347.

PROC. 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

Proc. 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. 2405(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 one other individual;

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 1959 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 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.*) [50 U.S.C. 1621, 1631], 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 Tables 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

(Nov. 15, 1941, ch. 471, § 2, 55 Stat. 763; Pub. L. 87–845, § 11, Oct. 18, 1962, 76A Stat. 699; Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938.)

AMENDMENTS

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

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–845 effective Jan. 2, 1963, see section 25 of Pub. L. 87–845, set out as a note under section 414 of Title 28, Judiciary and Judicial Procedure.

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 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, 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.

§ 191b. Repealed. Pub. L. 96–70, title III, § 3303(a)(5), Sept. 27, 1979, 93 Stat. 499

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.

§ 191c. Repealed. Aug. 4, 1949, ch. 393, § 20, 63 Stat. 561

Section, act Nov. 15, 1941, ch. 471, § 1, 55 Stat. 763, related to control of anchorage and movement of vessels to insure safety 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,[1] or obstructs or interferes

[1] See References in Text note below.

with the exercise of any power conferred by this title,[1] 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 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,[1] or knowingly obstructs or interferes with the exercise of any power conferred by this title,[1] 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,[1] or a regulation prescribed under this title,[1] 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,[1] or of any regulation issued under this title,[1] 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.

(June 15, 1917, ch. 30, title II, §2, 40 Stat. 220; Mar. 28, 1940, ch. 72, §3(a), 54 Stat. 79; Nov. 15, 1941, ch. 471, §3, 55 Stat. 763; Aug. 9, 1950, ch. 656, §3, 64 Stat. 428; Pub. L. 107–295, title I, §104(b), Nov. 25, 2002, 116 Stat. 2085; Pub. L. 108–293, title VIII, §802(b), Aug. 9, 2004, 118 Stat. 1079.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a) to (d), 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.

CODIFICATION

In subsec. (e)(1), ''section 60105 of title 46'' substituted for ''section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)'' on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–293, §802(b)(1), substituted ''title'' for ''Act'' in two places.

Subsecs. (d), (e). Pub. L. 108–293, §802(b)(2), added subsecs. (d) and (e).

2002—Pub. L. 107–295 inserted subsec. headings, designated first par. as subsec. (a), redesignated former subsec. (a) as (b), and added subsec. (c).

1950—Subsec. (a). Act Aug. 9, 1950, added subsec. (a).

1941—Act Nov. 15, 1941, struck out ''by the Secretary of the Treasury or the Governor of the Panama Canal'' before ''under the provisions of this title''.

1940—Act Mar. 28, 1940, increased term of imprisonment.

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.

§ 193. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

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]

(June 15, 1917, ch. 30, title II, §4, 40 Stat. 220; Aug. 9, 1950, ch. 656, §2, 64 Stat. 428.)

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.

[1] See References in Text note below.

(June 15, 1917, ch. 30, title XIII, §1, 40 Stat. 231; Pub. L. 96–70, title III, §3302(b), Sept. 27, 1979, 93 Stat. 498; Pub. L. 107–295, title I, §104(a), Nov. 25, 2002, 116 Stat. 2085.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 15, 1917, ch. 30, 40 Stat. 217, as amended. For complete classification of this Act to the Code, see Tables.

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 31 to 42 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 hereunder, 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 accord with the provisions of section 56305 of title 46 shall be made from such fund upon the certificate of the Secretary of Transportation.

(Aug. 9, 1954, ch. 659, §1, 68 Stat. 675; Pub. L. 96–70, title III, §3302(c), Sept. 27, 1979, 93 Stat. 498; Pub. L. 97–31, §12(152), Aug. 6, 1981, 95 Stat. 167.)

CODIFICATION

In text, ''chapter 563 of title 46'' substituted for ''section 902 of the Merchant Marine Act, 1936, as amended'' in two places and ''section 56305 of title 46'' substituted for ''the second paragraph of subsection (d) of such section 902, as amended,'' on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted chapter 563 of Title 46, Shipping.

AMENDMENTS

1981—Pub. L. 97–31 substituted references to Secretary of Transportation for references to Secretary of Commerce wherever appearing.

1979—Pub. L. 96–70 struck out '', including the Canal Zone,'' after ''jurisdiction of the United States''.

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.

§ 197. Voluntary purchase or charter agreements

During any period in which vessels may be requisitioned under chapter 563 of title 46, the President is authorized through the Secretary of Transportation to acquire by voluntary agreement of purchase or charter the ownership or use of any merchant vessel not owned by citizens of the United States.

(Aug. 9, 1954, ch. 659, §2, 68 Stat. 675; Pub. L. 97–31, §12(152), Aug. 6, 1981, 95 Stat. 167.)

CODIFICATION

In text, ''chapter 563 of title 46'' substituted for ''section 902 of the Merchant Marine Act, 1936, as amended'' on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted chapter 563 of Title 46, Shipping.

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 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 5 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 5 of title 41, 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''.

(Aug. 9, 1954, ch. 659, §3, 68 Stat. 675; Pub. L. 89–670, §6(b)(1), (2), Oct. 15, 1966, 80 Stat. 938; Pub. L. 97–31, §12(152), Aug. 6, 1981, 95 Stat. 167.)

CODIFICATION

''Section 57109 of title 46'' substituted in subsec. (c) for ''The second paragraph of section 9 of the Shipping Act, 1916, as amended,'' and ''chapter 575 of title 46'' substituted in subsec. (d) for ''title VII of the Merchant Marine Act, 1936'' on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 57109 and chapter 575 of Title 46, Shipping.

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 functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of all other officers and offices 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.

Sec.
213. Jurisdiction of confiscation proceedings.
214. Repealed.
215. Institution of confiscation proceedings.
216. Preventing transportation of goods to aid insurrection.
217. Trading in captured or abandoned property.
218. Repealed.
219. Removal of customhouse and detention of vessels thereat.
220. Enforcement of section 219.
221. Closing ports of entry; forfeiture of vessels seeking to enter closed port.
222. Transferred.
223. Forfeiture of vessels owned by citizens of insurrectionary States.
224. Refusing clearance to vessels with suspected cargoes; forfeiture for departing without clearance.
225. Bond to deliver cargo at destination named in clearance.
226. Protection of liens on condemned vessels.

§§ 201 to 204. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 201, R.S. § 5297, provided for Federal aid for State Governments in case of an insurrection in any State. See section 331 of Title 10, Armed Forces.

Section 202, R.S. § 5298, related to use of military and naval forces to enforce authority of Federal Government. See section 332 of Title 10.

Section 203, R.S. § 5299, related to denial by State of equal protection of laws and authorized the President to take measures for the suppression of any insurrection, domestic violence, or combinations. See section 333 of Title 10.

Section 204, R.S. § 5300, authorized the President to issue a proclamation commanding insurgents to disperse. See section 334 of Title 10.

§ 205. Suspension of commercial intercourse with State in insurrection

Whenever the President, in pursuance of the provisions of this chapter, has called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when the insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which such combination exists, and such insurrection is not suppressed by such State or States, or whenever the inhabitants of any State or part thereof are at any time found by the President to be in insurrection against the United States, the President may, by proclamation, declare that the inhabitants of such State, or of any section or part thereof where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from such State or section into the other parts of the United States, or proceeding from other parts of the United States to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States.

(R.S. § 5301.)

CODIFICATION

R.S. § 5301 derived from acts July 13, 1861, ch. 3, § 5, 12 Stat. 257; July 31, 1861, ch. 32, 12 Stat. 284.

§ 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 shall become 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

R.S. § 5302 derived from act July 2, 1864, ch. 225, § 5, 13 Stat. 376.

§ 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 within the lines of national military occupation in the States 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

R.S. § 5303 derived from act July 2, 1864, ch. 225, § 4, 13 Stat. 376.

§ 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

R.S. § 5304 derived from acts July 13, 1861, ch. 3, § 5, 12 Stat. 257; July 2, 1864, ch. 225, § 9, 13 Stat. 377.

§ 209. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632

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

R.S. § 5306 derived from act July 2, 1864, ch. 225, § 10, 13 Stat. 377.

§ 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

R.S. § 5307 derived from act July 2, 1864, ch. 225, § 10, 13 Stat. 377.

§ 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''.

§ 214. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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 proceedings shall be for the use of such informer and the United States in equal parts.

(R.S. § 5311; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CODIFICATION

R.S. § 5311 derived from act Aug. 6, 1861, ch. 60, § 3, 12 Stat. 319.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''attorney of the United States''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

§ 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 place in the possession or under the control of insurgents against the United States, or that there is imminent danger that such property will fall into the possession or under the control 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 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 of 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

R.S. § 5313 derived from act July 2, 1864, ch. 225, § 10, 13 Stat. 377.

§ 218. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632

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[1] 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

R.S. § 5315 derived from acts July 13, 1861, ch. 3, § 2, 12 Stat. 256; Mar. 3, 1875, ch. 136, § 2, 18 Stat. 469.

TRANSFER OF FUNCTIONS

All offices of collector 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

[1] See References in Text note below.

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.

§ 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.

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 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.

§ 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[1] 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.)

[1] See References in Text note below.

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.

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 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.

§ 222. Transferred

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.

§ 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

R.S. § 5319 derived from act July 12, 1861, ch. 3, § 7, 12 Stat. 257.

§ 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. 404.

§ 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 vessel, 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 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.

§ 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 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 participated in the illegal use of such ship, vessel, or other property. This section shall extend to such claims only as might have been enforced specifically against such vessel, or other property, in any State not declared to be in insurrection, wherein such claim arose.

(R.S. § 5322.)

CODIFICATION

R.S. § 5322 derived from act Mar. 3, 1863, ch. 90, 12 Stat. 762.

CHAPTER 14—WARTIME VOTING BY LAND AND NAVAL FORCES

§§ 301 to 303. Repealed. Aug. 9, 1955, ch. 656, title III, § 307, 69 Stat. 589

Section 301, acts Sept. 16, 1942, ch. 561, title I, § 1, 56 Stat. 753; July 1, 1943, ch. 187, §§ 1, 5, 57 Stat. 371, granted absentee members of land or naval forces of the United States the right to vote in Presidential, Vice Presidential, and Congressional elections. See section 1973ff et seq. of Title 42, The Public Health and Welfare.

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, § 53, 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 306, act Sept. 16, 1942, ch. 561, § 6, 56 Stat. 755, related to use of official envelopes.

Section 307, act Sept. 16, 1942, ch. 561, § 7, 56 Stat. 756, related to transmission of ballots.

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

Section 309, act Sept. 16, 1942, ch. 561, § 9, 56 Stat. 756, related to certification of votes.

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

Section 311, act Sept. 16, 1942, ch. 561, § 11, 56 Stat. 757, related to utilization of services of local agencies.

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

Section 313, act Sept. 16, 1942, ch. 561, § 13, 56 Stat. 757, related to primary elections.

Section 314, act Sept. 16, 1942, ch. 561, § 14, 56 Stat. 757, related to offenses against elective franchise.

Section 315, act Sept. 16, 1942, ch. 561, § 15, 56 Stat. 757, related to formality of compliance.

§§ 321 to 331. Repealed. Aug. 9, 1955, ch. 656, title III, § 307, 69 Stat. 589

Section 321, act Sept. 16, 1942, ch. 561, title II, § 201, as added Apr. 1, 1944, ch. 150, 58 Stat. 136; amended Apr. 19, 1946, ch. 142, 60 Stat. 96, related to State absentee voting legislation.

Section 322, act Sept. 16, 1942, ch. 561, title II, § 202, as added Apr. 1, 1944, ch. 150, 58 Stat. 137; amended Apr. 19, 1946, ch. 142, 60 Stat. 96, related to use of post cards.

Section 323, act Sept. 16, 1942, ch. 561, title II, § 203, as added Apr. 1, 1944, ch. 150, 58 Stat. 137; amended Apr. 19, 1946, ch. 142, 60 Stat. 97, related to distribution of ballots.

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. 1112, § 1, 64 Stat. 1082, provided for style and markings of envelopes, protective inserts, return envelopes, and size and weight of ballots and envelopes.

Section 325, act Sept. 16, 1942, ch. 561, title II, § 205, as added Apr. 1, 1944, ch. 150, 58 Stat. 138; amended Apr. 19, 1946, ch. 142, 60 Stat. 97, related to signature and oath of voter.

Section 326, act Sept. 16, 1942, ch. 561, title II, § 206, as added Apr. 1, 1944, ch. 150, 58 Stat. 139; amended Apr. 19,

1946, ch. 142, 60 Stat. 98, related to instructions for marking ballots.

Section 327, act Sept. 16, 1942, ch. 561, title II, §207, as added Apr. 1, 1944, ch. 150, 58 Stat. 139; amended Apr. 19, 1946, ch. 142, 60 Stat. 99, related to extension of State's time limits.

Section 328, act Sept. 16, 1942, ch. 561, title II, §208, as added Apr. 19, 1946, ch. 142, 60 Stat. 99, provided for notification of forthcoming elections by secretaries of states.

Section 329, act Sept. 16, 1942, ch. 561, title II, §209, as added Apr. 19, 1946, ch. 142, 60 Stat. 99; amended Sept. 29, 1950, ch. 1111, 64 Stat. 1082, provided for cooperation with States, printing and transmitting of post cards, and content of post cards.

Section 330, act Sept. 16, 1942, ch. 561, title II, §210, as added Apr. 19, 1946, ch. 142, 60 Stat. 101; amended July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501, related to transmission of post cards.

Section 331, act Sept. 16, 1942, ch. 561, title II, §211, as added Apr. 19, 1946, ch. 142, 60 Stat. 101; amended July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501, related to distribution of information.

A prior section 331, act Sept. 16, 1942, ch. 561, title III, §301, as added Apr. 1, 1944, ch. 150, 58 Stat. 140, related to establishment of United States War Ballot Commission and was repealed by act Apr. 19, 1946, ch. 142, 60 Stat. 96.

ADDITIONAL REPEAL

Sections 321 to 331 were also repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641.

§§ 332 to 340. Repealed. Apr. 19, 1946, ch. 142, 60 Stat. 96

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 333, act Sept. 16, 1942, ch. 561, title III, §303, as added Apr. 1, 1944, ch. 150, 58 Stat. 141, related to Federal war ballots.

Section 334, act Sept. 16, 1942, ch. 561, title III, §304, as added Apr. 1, 1944, ch. 150, 58 Stat. 143, 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 336, act Sept. 16, 1942, ch. 561, title III, §306, as added Apr. 1, 1944, ch. 150, 58 Stat. 144, related to lists of candidates.

Section 337, act Sept. 16, 1942, ch. 561, title III, §307, as added Apr. 1, 1944, ch. 150, 58 Stat. 144, related to distribution and collection of ballots.

Section 338, act Sept. 16, 1942, ch. 561, title III, §308, as added Apr. 1, 1944, ch. 150, 58 Stat. 145, related to merchant marine ballots.

Section 339, act Sept. 16, 1942, ch. 561, title III, §309, as added Apr. 1, 1944, ch. 150, 58 Stat. 145, related to transmission of ballots.

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. Repealed. Aug. 9, 1955, ch. 656, title III, § 307, 69 Stat. 589

Section, act Sept. 16, 1942, ch. 561, title III, §301, as added Apr. 19, 1946, ch. 142, 60 Stat. 101, provided for prevention of fraud, coercion, and undue influence; free discussion, and acts done in good faith.

A prior section 341, act Sept. 16, 1942, ch. 561, title III, §311, as added Apr. 1, 1944, ch. 150, 58 Stat. 146, related to validity of ballots and was repealed by act Apr. 19, 1946, ch. 142, 60 Stat. 96.

ADDITIONAL REPEAL

Section was also repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641.

§ 342. Repealed. May 24, 1949, ch. 139, § 142, 63 Stat. 109

Section, act Sept. 16, 1942, ch. 561, title III, §302, as added Apr. 19, 1946, ch. 142, 60 Stat. 102, related to prohibition against taking of polls. See section 596 of Title 18, Crimes and Criminal Procedure.

A prior section 342, act Sept. 16, 1942, ch. 561, title III, §312, as added Apr. 1, 1944, ch. 150, 58 Stat. 146, which provided for safeguards and secrecy of ballots and prevention of fraud and coercion as to voting, was repealed by act Apr. 19, 1946, ch. 142, 60 Stat. 102.

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

Section 343, act Sept. 16, 1942, ch. 561, title III, §313, as added Apr. 1, 1944, ch. 150, 58 Stat. 146, related to penalties under sections 341 to 347 of this title.

Section 344, act Sept. 16, 1942, ch. 561, title III, §314, as added Apr. 1, 1944, ch. 150, 58 Stat. 146, related to prohibition on taking polls. See section 596 of Title 18, Crimes and Criminal Procedure.

Section 344 was also repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862.

Section 345, act Sept. 16, 1942, ch. 561, title III, §315, as added Apr. 1, 1944, ch. 150, 58 Stat. 147, related to certain State officials.

Section 346, act Sept. 16, 1942, ch. 561, title III, §316, as added Apr. 1, 1944, ch. 150, 58 Stat. 147, related to agencies acting for the Secretary of State.

Section 347, act Sept. 16, 1942, ch. 561, title III, §317, as added Apr. 1, 1944, ch. 150, 58 Stat. 147, related to construction of chapter.

§§ 351 to 355. Repealed. Aug. 9, 1955, ch. 656, title III, § 307, 69 Stat. 589

Section 351, act Sept. 16, 1942, ch. 561, title IV, §401, as added Apr. 19, 1946, 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, authorized appropriations for purposes of this chapter and was repealed by act Apr. 19, 1946, ch. 142, 60 Stat. 96.

Section 352, act Sept. 16, 1942, ch. 561, title IV, §402, as added Apr. 19, 1946, ch. 142, 60 Stat. 102; amended Sept. 29, 1950, ch. 1112, §2, 64 Stat. 1083, related to free postage.

A prior section 352, act Sept. 16, 1942, ch. 561, title IV, §402, as added Apr. 1, 1944, ch. 150, 58 Stat. 147, related to free postage and was repealed by act Apr. 19, 1946, ch. 142, 60 Stat. 96.

Section 353, act Sept. 16, 1942, ch. 561, title IV, §403, as added Apr. 19, 1946, ch. 142, 60 Stat. 103, related to administration of this chapter.

A prior section 353, act Sept. 16, 1942, ch. 561, title IV, §403, as added Apr. 1, 1944, ch. 150, 58 Stat. 148, defined terms for purposes of this chapter and was repealed by act Apr. 19, 1946, ch. 142, 60 Stat. 96.

Section 354, act Sept. 16, 1942, ch. 561, title IV, §404, as added Apr. 19, 1946, ch. 142, 60 Stat. 103, related to separability of provisions.

A prior section 354, act Sept. 16, 1942, ch. 561, title IV, §404, as added Apr. 1, 1944, ch. 150, 58 Stat. 148, related to separability of provisions and was repealed by act Apr. 19, 1946, ch. 142, 60 Stat. 96.

Section 355, 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.

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§ 401. Congressional declaration of purpose

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.

(July 26, 1947, ch. 343, §2, 61 Stat. 496; Aug. 10, 1949, ch. 412, §2, 63 Stat. 579; Pub. L. 85–599, §2, Aug. 6, 1958, 72 Stat. 514.)

REFERENCES IN TEXT

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

Pub. L. 108–458, title I, § 1081, Dec. 17, 2004, 118 Stat. 3696, provided that:

''(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

Pub. L. 108–458, title I, subtitle H, Dec. 17, 2004, 118 Stat. 3697, as amended by Pub. L. 109–13, div. A, title I, § 1009, May 11, 2005, 119 Stat. 244, provided that:

''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 the Director of National Intelligence determines to be appropriate, including all functions and activities discharged by the Community Management Staff as of that date.

''(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 1011(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 Terrorist Threat Integration Center 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 Directorate of Intelligence of the National Counterterrorism Center under section 119(i) of the National Security Act of 1947 [50 U.S.C. 404*o*(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 six months after the date of enactment, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note below.].

''(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 1094.

''(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 required under section 102A of the National Security Act of 1947 [50 U.S.C. 403–1], as amended by section 1011(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. 48633, set out as a note under section 301 of Title 3, The President.]

EFFECTIVE DATE

Section 310 of act July 26, 1947, provided:

''(a) The first sentence of section 202(a) [section 171a of former Title 5, Executive Departments and Government Officers and Employees] and sections 1, 2, 307, 308, 309, and 310 [section 171 note of former Title 5, section 361 of this title, and sections 171m and 171n of former Title 5] shall take effect immediately upon the enactment of this Act [July 26, 1947].

''(b) Except as provided in subsection (a), the provisions of this Act [sections 171 to 171*l*, 181–1, 181–2, 411a, 411b, 626 to 626d of former Title 5, section 24 of Title 3, The President, and sections 401 to 405 of this title] shall take effect on whichever of the following days is the earlier: The day after the day upon which the Secretary of Defense first appointed takes office, or the sixtieth day after the date of the enactment of this Act [July 26, 1947].''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–458, §1(a), Dec. 17, 2004, 118 Stat. 3638, provided that: ''This Act [see Tables for classification] may be cited as the 'Intelligence Reform and Terrorism Prevention Act of 2004'.''

Pub. L. 108–458, title I, §1001, Dec. 17, 2004, 118 Stat. 3643, provided that: ''This title [enacting sections 402–1, 403, 403–1, 403–1a to 403–1c, 403–3, 403–3a to 403–3f, 403–4, 403–4a, 403–4b, 404*o*, 404*o*–1, 404*o*–2, 441g–1, and 441g–2 of this title, section 8K of the Inspector General Act set out in the Appendix to Title 5, Government Organization and Employees, and section 485 of Title 6, Domestic Security, amending sections 401a, 402, 402a to 402c, 403–5, 403–5b, 403–6, 403a, 403b, 403g, 403n, 403p, 403q, 403t, 403u, 404e, 404g to 404i, 404i–1, 404j to 404*l*, 404n, 404n–1, 404n–2, 405, 413, 413a, 413b, 414, 415a, 415a–1, 423, 431, 432, 432a, 432b, 441g, 442a, 1802 to 1805, 1822 to 1824, 1842, 2001, and 2011 of this title, sections 5312, 5313, 5315, 7323, and 7342 of Title 5, section 105 of the Ethics in Government Act set out in the Appendix to Title 5, section 9 of the Classified Information Procedures Act set out in the Appendix to Title 18, Crimes and Criminal Procedure, and section 113 of Title 40, Public Buildings, Property, and Works, repealing sections 403, 403–1, 403–3, 403–4, and 404f of this title, enacting provisions set out as notes under this section, sections 403, 403–1, 403–1a, and 403–4b of this title, and section 601 of Title 5, and amending provisions set out as notes under sections 403, 403–3, 403–4, 435, and 441g of this title, section 4124 of Title 18, and section 519 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'National Security Intelligence Reform Act of 2004'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–306, title IX, §901(a), Nov. 27, 2002, 116 Stat. 2432, provided that: ''This title [enacting sections 402b and 402c of this title, amending section 402a of this title, and enacting provisions set out as a note under section 402b of this title] may be cited as the 'Counterintelligence Enhancement Act of 2002'.''

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 403t of this title, amending sections 402, 403, 403–3 to 403–6, and 404d 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 403t 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 1924 of Title 18, 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, 798, 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

Pub. L. 102–496, title VII, §701, Oct. 24, 1992, 106 Stat. 3188, provided that: ''This title [enacting sections 401a and 403–3 to 403–6 of this title, amending sections 402, 403, 404, and 404a of this title, and repealing section 403–1 of this title] may be cited as the 'Intelligence Organization Act of 1992'.''

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

Pub. L. 97–200, §1, June 23, 1982, 96 Stat. 122, provided: ''That this Act [enacting subchapter IV of this chapter] may be cited as the 'Intelligence Identities Protection Act of 1982'.''

SHORT TITLE OF 1949 AMENDMENT

Section 1 of act Aug. 10, 1949, provided that: ''This Act [enacting sections 408 and 412 of this title and sections 171–1, 171t, 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, 403d, 405, 410, 459, 481, and 494 of this title, sections 171, 171a, 171b to 171d, 171e to 171j, 171n, 171r, 172e, 411b, and 626c of former Title 5, section 1748b of Title 12, Banks and Banking, section 1517 of Title 15, Commerce and Trade, sections 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 403, 404, 405, and 408 to 412 of this title, and sections 171, 171–1, 171–2, 171a, 171b to 171d, 171e to 171j, 171k to 171m, 171n, 172, 172a to 172d, 172f to 172j, 181–1, 181–2, 411a, 411b, 626, 626a to 626c, and 626d 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:

Section of former Title 5	*Section of Title 10*
171	131, 133.
171a(a), (b)	133.
171a(c)	125, 136, 141, 3010, 3012, 5011, 5031, 8010, 8012.
171a(d)	133.
171a(e)	132.
171a(f)	133.
171a(g)–(i)	[Omitted].
171a(j)	124.
171c	134, 135, 136, 718, 2358.
171c–1, 171c–2	[Repealed].
171d	1580.
171e	171.
171f	141, 142.
171g	143.
171h	2201.
171i	2351.
171j	173.
172	136.
172a	3014, 5061, 8014.
172b	2203.
172c	2204.
172d	2208.
172e	2209.
172f	126.
172g	2205.
172h	2206.
172i	2701.
181–1	101, 3011, 3012, 3062, T. 50 § 409.
181–2	3012.
411a(a)	101; T. 50 § 409.
411a(b)	5012.
411a(c)	5013, 5402.
626(a)	8012.
626(b)	[Repealed].
626(c)	101; T. 50 § 409.
626(d)	8013.
626(e)	8012.
626(f)	8033.
626(g)	8011.
626a	8012.
626b	8013.
626c	743, 8062.

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 1011(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 deemed 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 1011(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 deemed 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. 108–458, 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 that: ''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. 2450, provided that: ''Not later than February 1, 2010, the Director of National Intelligence and the Secretary of Defense shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate a revised charter for the National Reconnaissance Office (in this section referred to as the 'NRO'). The charter shall include the following:

''(1) The organizational and governance structure of the NRO.

''(2) The role of the NRO in the development and generation of requirements and acquisition.

''(3) The scope of the capabilities of the NRO.

''(4) The roles and responsibilities of the NRO and the relationship of the NRO to other organizations and agencies in the intelligence and defense communities.''

INCORPORATION OF REPORTING REQUIREMENTS

Pub. L. 108–177, title I, § 106, Dec. 13, 2003, 117 Stat. 2604, provided that:

''(a) IN GENERAL.—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill H.R. 2417 of the One Hundred Eighth Congress [enacted as Pub. L. 108–177], or in the classified annex to this Act, is hereby incorporated into this Act, and is hereby made a requirement in law.

''(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.''

Similar provisions were contained in Pub. L. 107–306, title I, § 108, Nov. 27, 2002, 116 Stat. 2388.

NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY

Pub. L. 107–306, title X, Nov. 27, 2002, 116 Stat. 2437, as amended by Pub. L. 108–177, title III, § 315(a), Dec. 13, 2003, 117 Stat. 2610, established the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community to review the status of research and development programs and activities within the intelligence community, directed the Commission to submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report on such review not later than Sept. 1, 2004, provided that the Commission was to terminate at the end of the 120-day period beginning on the date on which the final report was transmitted to the congressional intelligence committees, and directed the Director of Central Intelligence and the Secretary of Defense to each submit to the congressional intelligence committees an assessment of the final report not later than 60 days after receipt.

NATIONAL COMMISSION FOR THE REVIEW OF THE NATIONAL RECONNAISSANCE OFFICE

Pub. L. 106–120, title VII, Dec. 3, 1999, 113 Stat. 1620, established the National Commission for the Review of the National Reconnaissance Office to review the current organization, practices, and authorities of the National Reconnaissance Office, directed the Commission to submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report on such review not later than Nov. 1, 2000, provided that the Commission would terminate at the end of the 120-day period beginning on the date on which the final report was transmitted to the congressional intelligence committees, and directed the Director of Central Intelligence and the Secretary of Defense to each submit to the congressional intelligence committees an assessment of the final report not later than 60 days after receipt.

COMMISSION ON ROLES AND CAPABILITIES OF UNITED STATES INTELLIGENCE COMMUNITY

Pub. L. 103–359, title IX, Oct. 14, 1994, 108 Stat. 3456, related to establishment, composition, duties, reports, powers, payment of expenses, and termination, not later than Mar. 1, 1996, of the Commission on the Roles and Capabilities of the United States Intelligence Community.

NATIONAL COMMISSION ON DEFENSE AND NATIONAL SECURITY

Pub. L. 101–511, title VIII, § 8104, Nov. 5, 1990, 104 Stat. 1898, as amended by Pub. L. 102–172, title VIII, § 8078, Nov. 26, 1991, 105 Stat. 1189, provided that:

''SECTION 1. This section establishes the National Commission on Defense and National Security.

''SEC. 2. FINDINGS.

''The Congress makes the following findings:

''(1) Recent revolutionary world events require a fundamental reassessment of the defense and national security policies of the United States.

''(2) Emerging democracies around the world will require political, technical, and economic assistance, as well as military assistance, from the developed free nations in order to thrive and to become productive members of the world community.

''(3) Real and potential military threats to the United States and its allies will continue to exist for the foreseeable future from not just the Soviet Union but also from terrorism and from Third World nations.

''(4) Proliferation of both sophisticated conventional weapons and of nuclear weapons could produce a world more dangerous than we have faced in the past.

''(5) Ethnic rivalries as well as economic inequalities may produce instabilities that could spark serious conflict.

''(6) In order to formulate coherent national policies to meet these challenges of a new world environment, it is essential for the United States to achieve a bipartisan consensus such as that which emerged following World War II.

''(7) Such a consensus can be fostered by the development of policy recommendations from a highly respected group of individuals who do not bear a partisan label and who possess critical expertise and experience.

''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) Three 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.

''(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 not later than six months after the date on which the Commission is first constituted with a quorum.

''(b) FINAL REPORT.—The Commission shall transmit to the President and to Congress a final 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 53 of such title relating 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 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

INTELLIGENCE PRIORITIES AND REORGANIZATION

Pub. L. 101–510, div. A, title IX, §907, Nov. 5, 1990, 104 Stat. 1622, provided that:

''(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.; REAPPOINTMENT

Section 12(f) of act Aug. 10, 1949, provided in part that: ''The titles of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary 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 Development 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: ''Reorganization Plan Numbered 8 of 1949, which was transmitted to the Congress by the President on July 18, 1949 [set out in Appendix to Title 5, Government Organization and Employees] pursuant to the provisions of the Reorganization Act of 1949, shall not take effect, notwithstanding the provisions of section 6 of such Reorganization Act of 1949.''

EX. ORD. NO. 10431. NATIONAL SECURITY MEDAL

Ex. Ord. No. 10431, Jan. 19, 1953, 18 F.R. 437, provided:

1. There is hereby established a medal to be known as the National Security Medal with accompanying ribbons and appurtenances. The medal and its appurtenances shall be of appropriate design, approved by the Executive Secretary of the National Security Council.

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 relating 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 uniform 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 contribution to the National intelligence effort. This contribution may consist of either exceptionally meritorious service performed in a position of high responsibility 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 design 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 Executive 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 services, either as an eyewitness or from the testimony of others who have personal knowledge or were eyewitnesses. Any recommendations shall be accompanied by complete documentation, including where necessary, 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 recommended for the National Security Medal.

5. Each recommendation shall contain a draft of an appropriate citation to accompany the award of the National Security Medal.

EXECUTIVE ORDER NO. 11905

Ex. Ord. No. 11905, Feb. 18, 1976, 41 F.R. 7703, as amended by Ex. Ord. No. 11985, May 13, 1977, 42 F.R. 25487; Ex. Ord. No. 11994, June 1, 1977, 42 F.R. 28869, which related to United States foreign intelligence activities, 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 intelligence activities, was revoked by Ex. Ord. No. 12333, §3.6, Dec. 4, 1981, 46 F.R. 59954, prior to Ex. Ord. No. 12333 being amended by Ex. Ord. No. 13470, §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. 13284, §18, Jan. 23, 2003, 68 F.R. 4077; Ex. Ord. No. 13355, §§2, 3, 6, Aug. 27, 2004, 69 F.R. 53593; Ex. Ord. No. 13470, §§1–4, July 30, 2008, 73 F.R. 45325, provided:

TABLE OF CONTENTS [Omitted.]

Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign 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 Constitution and the laws of the United States of America, including 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 activities and the protection of constitutional rights, it is hereby ordered as follows:

PART 1—GOALS, DIRECTIONS, DUTIES, AND RESPONSIBILITIES WITH RESPECT TO UNITED STATES INTELLIGENCE EFFORTS

1.1 GOALS

The United States intelligence effort shall provide the President, the National Security Council, and the Homeland Security Council with the necessary information on which to base decisions concerning the development and conduct of foreign, defense, and economic policies, and the protection of United States national interests from foreign security threats. All departments 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 reliable intelligence information to protect the United States and its interests.

(b) The United States Government has a solemn obligation, and shall continue in the conduct of intelligence activities under this order, to protect fully the legal rights of all United States persons, including freedoms, civil liberties, and privacy rights guaranteed by Federal law.

(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 dissents, 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 or the authority of the head of a department or Intelligence Community element; and

(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, and after consultation with thehead [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) May 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, or 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 elements, including military commands;

(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 authority 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 the 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, coordinate, 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 the 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. In the case of 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 appropriate, operational systems and architectures of their departments, agencies, and other elements with the Director to respond to national intelligence requirements and all applicable information sharing and security guidelines, information privacy, and other legal requirements;

(d) Provide, to the maximum extent permitted by law, subject to the availability of appropriations and not inconsistent with the mission of the department or agency, such further support to the Director as the Director may request, after consultation with the head of the department or agency, for the performance of the Director's functions;

(e) Respond to advisory tasking from the Director under section 1.3(b)(18) of this order to the greatest extent possible, in accordance with applicable policies established by the head of the responding department or agency;

(f) Ensure that all elements within the department or agency comply with the provisions of Part 2 of this order, regardless of Intelligence Community affiliation, when performing foreign intelligence and counterintelligence functions;

(g) 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;

(h) Inform the Attorney General, either directly or through the Federal Bureau of Investigation, and 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 sources or 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 they have reason to believe may be unlawful or contrary to executive order or presidential directive;

(d) Protect intelligence and intelligence sources, methods, and activities from unauthorized disclosure in accordance with guidance from the Director;

(e) Facilitate, as appropriate, the sharing of information or intelligence, as directed by law or the President, to State, local, tribal, and private sector entities;

(f) Disseminate information or intelligence to foreign governments and international organizations under in-

telligence or counterintelligence arrangements or agreements established in accordance with section 1.3(b)(4) of this order;

(g) 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

(h) 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 heads of departments 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) Conduct 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;

(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 an appropriate agent 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 102A(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 overhead 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 departmental requirements, and, as appropriate, national requirements;

(2) Conduct counterintelligence activities;

(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 military 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, in accordance with procedural guidelines approved by the Attorney General, after consultation with the Director;

(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;

(2) Conduct counterintelligence activities;

(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 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. 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 (overtly 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 (overtly 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) Transmit 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 discharging 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 (overtly 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 advisory tasking 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, and 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 cover and proprietary arrangements, to perform the functions described in [sub]sections (a) though [sic] (i) above, and to support the Intelligence Community elements of the Department of Defense; and

(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 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 Commu-

nity are not authorized to use such techniques as electronic surveillance, unconsented physical search, 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 concerned 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 physical searches 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, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is 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 its 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 cooperate 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 in 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 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.

(c) *Electronic surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(d) *Employee* means a person employed by, assigned or detailed to, or acting for an element within the Intelligence Community.

(e) *Foreign intelligence* means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

(f) *Intelligence* includes foreign intelligence and counterintelligence.

(g) *Intelligence activities* means all activities that elements of the Intelligence Community are authorized to conduct pursuant to this order.

(h) *Intelligence Community and elements of the Intelligence Community* refers to:

(1) The Office of the Director of National Intelligence;

(2) The Central Intelligence Agency;

(3) The National Security Agency;

(4) The Defense Intelligence Agency;

(5) The National Geospatial-Intelligence Agency;

(6) The National Reconnaissance Office;

(7) The other offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(8) The intelligence and counterintelligence elements of the Army, the Navy, the Air Force, and the Marine Corps;

(9) The intelligence elements of the Federal Bureau of Investigation;

(10) The Office of National Security Intelligence of the Drug Enforcement Administration;

(11) The Office of Intelligence and Counterintelligence of the Department of Energy;

(12) The Bureau of Intelligence and Research of the Department of State;

(13) The Office of Intelligence and Analysis of the Department of the Treasury;

(14) The Office of Intelligence and Analysis of the Department of Homeland Security;

(15) The intelligence and counterintelligence elements of the Coast Guard; and

(16) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director and the head of the department or agency concerned, as an element of the Intelligence Community.

(i) *National Intelligence and Intelligence Related to National Security* means all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that pertains, as determined consistent with any guidance issued by the President, or that is determined for the purpose of access to information by the Director in accordance with section 1.3(a)(1) of this order, to pertain to more than one United States Government agency; and that involves threats to the United States, its people, property, or interests; the development, proliferation, or use of weapons of mass destruction; or any other matter bearing on United States national or homeland security.

(j) *The National Intelligence Program* means all programs, projects, and activities of the Intelligence Community, as well as any other programs of the Intelligence Community designated jointly by the Director 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.

(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 1.3(b)(9) and (10) of Part 1 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. 13286, §87, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.]

EXECUTIVE ORDER NO. 12334

Ex. Ord. No. 12334, Dec. 4, 1981, 46 F.R. 59955, as amended by Ex. Ord. No. 12701, Feb. 14, 1990, 55 F.R. 5953, which established the President's Intelligence Oversight Board, was revoked by Ex. Ord. No. 12863, §3.3, Sept. 13, 1993, 58 F.R. 48441, formerly set out below.

EXECUTIVE ORDER NO. 12863

Ex. Ord. No. 12863, Sept. 13, 1993, 58 F.R. 48441, as amended by Ex. Ord. No. 13070, Dec. 15, 1997, 62 F.R. 66493; Ex. Ord. No. 13301, May 14, 2003, 68 F.R. 26981; Ex. Ord. No. 13376, Apr. 13, 2005, 70 F.R. 20261, which established the President's Foreign Intelligence Advisory Board, was revoked by Ex. Ord. No. 13462, §10, Feb. 29, 2008, 73 F.R. 11808, set out below.

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 to 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.

SEC. 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 and preside at 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.

SEC. 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 such information, support, and assistance as the Chair of the Steering Committee may request from time to time.

SEC. 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 a national security professional development program 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; and

(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.

SEC. 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. 28, 2009, 74 F.R. 56521, 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.

SEC. 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.

SEC. 3. *Establishment of the President's Intelligence Advisory Board.* (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.

(d) Members of the PIAB and the Intelligence Oversight Board (IOB) established in section 5 of this order:

(i) shall serve without any compensation for their work on the PIAB or the IOB; and

(ii) while engaged in the work of the PIAB or the IOB, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707).

(e) The PIAB 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 PIAB, appointed by the President, whom the President may designate to serve also as the Executive Director of the IOB.

SEC. 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 counterintelligence and other intelligence activities, assess the adequacy of management, personnel and organization in the intelligence community, and review the performance of all agencies of the Federal Government that are engaged in the collection, evaluation, or production of intelligence or the execution of intelligence policy and report the results of such assessments or reviews:

(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.

SEC. 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. 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.

SEC. 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

(B) are not being adequately addressed by the Attorney General, the DNI, or the head of the department concerned; or

(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;

(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.

SEC. 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)(i)(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)(i)(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;

(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, and as appropriate the President, when such actions have not been timely taken; and

(c) submit to the IOB as necessary and no less than twice each year:

(i) an analysis of the reports received under subsection (b)(i) 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)(iii) 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 be references 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 until an Executive Director of 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 12958 of April 17, 1995, as amended, and Executive Order 12968 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 person.

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

(b) sections 1021 and 1092 of the Act [enacting section 404*o* 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 Federal Bureau of Investigation, 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, including the Office of Intelligence of the Coast Guard.

(L) Such other elements of any other 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.

(July 26, 1947, ch. 343, §3, as added Pub. L. 102–496, title VII, §702, Oct. 24, 1992, 106 Stat. 3188; amended Pub. L. 103–359, title V, §501(a)(1), Oct. 14, 1994, 108 Stat. 3428; Pub. L. 104–201, div. A, title XI, §1122(b)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 107–56, title IX, §902, Oct. 26, 2001, 115 Stat. 387; Pub. L. 107–108, title I, §105, Dec. 28, 2001, 115 Stat. 1397; Pub. L. 107–296, title II, §201(h), Nov. 25, 2002, 116 Stat. 2149; Pub. L. 107–306, title III, §353(a), Nov. 27, 2002, 116 Stat. 2401; Pub. L. 108–136, div. A, title IX, §921(e)(1), Nov. 24, 2003, 117 Stat. 1569; Pub. L. 108–177, title I, §105(d)(1), Dec. 13, 2003, 117 Stat. 2603; Pub. L. 108–458, title I, §§1012, 1073, 1074(a), Dec. 17, 2004, 118 Stat. 3662, 3693, 3694.)

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.

AMENDMENTS

2004—Par. (4). Pub. L. 108–458, §1073, amended par. (4) generally, substituting provisions defining ''intelligence community'' as including the Office of the Director of National Intelligence and other entities for provisions defining ''intelligence community'' as including the Office of the Director of Central Intelligence and other entities.

Par. (5). Pub. L. 108–458, §1012, amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The terms 'national intelligence' and 'intelligence related to the national security'—

''(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''.

2003—Par. (4)(E). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Par. (4)(H). Pub. L. 108–177, §105(d)(1)(A), struck out ''the Department of the Treasury,'' after ''the Federal Bureau of Investigation,''.

Par. (4)(J) to (L). Pub. L. 108–177, §105(d)(1)(B), (C), added subpar. (J) and redesignated former subpars. (J) and (K) as (K) and (L), respectively.

2002—Par. (4)(J), (K). Pub. L. 107–296 added subpar. (J) and redesignated former subpar. (J) as (K).

Par. (7). Pub. L. 107–306 added par. (7).

2001—Par. (2). Pub. L. 107–56, §902(1), inserted '', or international terrorist activities'' before period at end.

Par. (3). Pub. L. 107–56, §902(2), substituted '', and activities conducted,'' for ''and activities conducted''.

Par. (4)(H). Pub. L. 107–108 struck out ''and'' before ''the Department of Energy'' and inserted '', and the Coast Guard'' before semicolon.

1996—Par. (4)(E). Pub. L. 104–201 substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

1994—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.

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; Transition Provisions 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 193 of Title 10, Armed Forces.

DELEGATION OF FUNCTIONS

For assignment of function of President under par. (5)(A) of this section to Director of National Intelligence, see Ex. Ord. No. 12333, §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.

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 Munitions 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 in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(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 combatting 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.

(July 26, 1947, ch. 343, title I, §101, 61 Stat. 496; Aug. 10, 1949, ch. 412, §3, 63 Stat. 579; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Oct. 10, 1951, ch. 479, title V, §501(e)(1), 65 Stat. 378; Pub. L. 99–433, title II, §203, Oct. 1, 1986, 100 Stat. 1011; Pub. L. 99–500, §101(c) [title IX, §9115(f)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–125, and Pub. L. 99–591, §101(c) [title IX, §9115(f)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–125; Pub. L. 99–661, div. A, title XIII, §1311(f), Nov. 14, 1986, 100 Stat. 3986; Pub. L. 100–690, title I, §1003(a)(3), Nov. 18, 1988, 102 Stat. 4182; Pub. L. 102–496, title VII, §703, Oct. 24, 1992, 106 Stat. 3189; Pub. L. 104–293, title VIII, §§802, 804, Oct. 11, 1996, 110 Stat. 3474, 3476; Pub. L. 105–277, div. C, title VII, §713(b), Oct. 21, 1998, 112 Stat. 2681–693; Pub. L. 105–292, title III, §301, Oct. 27, 1998, 112 Stat. 2800; Pub. L. 108–458, title I, §§1071(a)(1)(A)–(D), 1072(a)(1), Dec. 17, 2004, 118 Stat. 3689, 3692; Pub. L. 110–53, title XVIII, §1841(g), Aug. 3, 2007, 121 Stat. 500; Pub. L. 110–140, title IX, §932, Dec. 19, 2007, 121 Stat. 1740.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsec. (c), are set forth in Title 5, Government Organization and Em-

ployees. See, particularly, section 3301 et seq. of Title 5.

This Act, referred to in subsec. (j), 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

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

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. 95–570 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.

Subsecs. (i), (k). Pub. L. 110–53, § 1841(g)(1), redesignated subsec. (i), relating to Special Adviser to the President on International Religious Freedom, as (k).

Subsec. (*l*). Pub. L. 110–53, § 1841(g)(2), added subsec. (*l*).

2004—Subsec. (h)(2)(A). Pub. L. 108–458, § 1071(a)(1)(A), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (h)(5). Pub. L. 108–458, § 1071(a)(1)(B), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (i)(2)(A). Pub. L. 108–458, § 1071(a)(1)(C), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

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).

Subsec. (i). Pub. L. 105–292 added subsec. (i) relating to Special Adviser to the President on International Religious Freedom.

1996—Subsec. (h). Pub. L. 104–293, § 802(2), added subsec. (h). Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 104–293, § 804, added subsec. (i).

Subsec. (j). Pub. L. 104–293, § 802(1), redesignated subsec. (h) as (j).

1992—Subsec. (h). Pub. L. 102–496 added subsec. (h).

1988—Subsecs. (f), (g). Pub. L. 100–690, §§ 1003(a)(3), 1009, temporarily added subsec. (f), relating to participation by Director of National Drug Control Policy in meetings of National Security Council, and redesignated former subsec. (f) as (g). See Effective and Termination Dates of 1988 Amendment note below.

1986—Subsec. (e). Pub. L. 99–433 added subsec. (e).

Subsec. (f). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended section identically adding subsec. (f).

1951—Subsec. (a). Act Oct. 10, 1951, inserted cl. (5) relating to Director for Mutual Security, in fourth paragraph, and renumbered former cls. (5) and (6) thereof as cls. (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 Chairmen 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

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

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; Transition Provisions note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective Jan. 21, 1989, and repealed on Sept. 30, 1997, see sections 1012 and 1009, respectively, of Pub. L. 100–690.

REPEALS

Act Oct. 28, 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. Foreign Operations Administration abolished by Ex. Ord. No. 10610, May 9, 1955, 20 F.R. 3179, and its functions and offices transferred to Department of State to be administered by International Cooperation Administration. For later transfer, see section 2381 of Title 22, Foreign Relations and Intercourse, and notes set out under that section.

National Security Resources Board, together with Office of Chairman, abolished by section 6 of Reorg. Plan No. 3 of 1953, eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634, set out under section 404 of this title. Functions of Chairman with limited exception, including his functions as a member of National Security Council transferred to Office of Defense Mobilization by section 2(a) of Reorg. Plan No. 3 of 1953. Functions of Director of Office of Defense Mobilization with respect to being a member of National Security Council transferred to Director of Office of Civil and Defense Mobilization by Reorg. Plan No. 1 of 1958, § 4, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799, as amended by Pub. L. 85–763, Aug. 26, 1958, 72 Stat. 861, set out as a note under section 5195 of Title 42, The Public Health and Welfare. For subsequent transfers to Office of Emergency Planning, Office of Emergency Preparedness, and President, see Transfer of Functions notes set out under section 404 of this title.

Munitions Board, together with office of Chairman, abolished by section 2 of Reorg. Plan No. 6 of 1953, eff. June 30, 1953, 18 F.R. 3743, 67 Stat. 638, set out in the Appendix to Title 5, Government Organization and Employees. All functions vested in Munitions Board transferred to Secretary of Defense by section 1(a) of Reorg. Plan No. 6 of 1953.

Research and Development Board, together with office of Chairman, abolished by section 2 of Reorg. Plan

No. 6 of 1953, eff. June 30, 1953, 18 F.R. 3743, 67 Stat. 638, set out in the Appendix to Title 5, Government Organization and Employees. Functions vested in Board transferred to Secretary of Defense by section 1(a) of Reorg. Plan No. 6 of 1953.

National Security Council, together with its functions, records, property, personnel, and unexpended balances of appropriations, allocations, and other funds (available or to be made available) transferred to Executive Office of President by Reorg. Plan No. 4 of 1949, eff. Aug. 20, 1949, 14 F.R. 5227, 63 Stat. 1067, set out in the Appendix to Title 5, Government Organization and Employees.

RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99–500, 99–591, AND 99–661

For rule of construction for certain duplicate provisions of Public Laws 99–500, 99–591, and 99–661, see section 6 of Pub. L. 100–26, set out as a note under section 2302 of Title 10, Armed Forces.

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

Pub. L. 108–375, div. A, title IX, §922, Oct. 28, 2004, 118 Stat. 2029, provided that:

''(a) PROGRAM AUTHORIZED.—The Director of the National Security Agency may carry out a pilot program on cryptologic service training for the intelligence community.

''(b) OBJECTIVE OF PROGRAM.—The objective of the pilot program is to increase the number of qualified entry-level language analysts and intelligence analysts available to the National Security Agency and the other elements of the intelligence community through the directed preparation and recruitment of qualified entry-level language analysts and intelligence analysts who commit to a period of service or a career in the intelligence community.

''(c) PROGRAM SCOPE.—The pilot program shall be national in scope.

''(d) PROGRAM PARTICIPANTS.—(1) Subject to the provisions of this subsection, the Director shall select the participants in the pilot program from among individuals qualified to participate in the pilot program utilizing such procedures as the Director considers appropriate for purposes of the pilot program.

''(2) Each individual who receives financial assistance under the pilot program shall perform one year of obligated service with the National Security Agency, or another element of the intelligence community approved by the Director, for each academic year for which such individual receives such financial assistance upon such individual's completion of post-secondary education.

''(3) Each individual selected to participate in the pilot program shall be qualified for a security clearance appropriate for the individual under the pilot program.

''(4) The total number of participants in the pilot program at any one time may not exceed 400 individuals.

''(e) PROGRAM MANAGEMENT.—In carrying out the pilot program, the Director shall—

''(1) identify individuals interested in working in the intelligence community, and committed to taking college-level courses that will better prepare them for a career in the intelligence community as a language analyst or intelligence analyst;

''(2) provide each individual selected for participation in the pilot program—

''(A) financial assistance for the pursuit of courses at institutions of higher education selected by the Director in fields of study that will qualify such individual for employment by an element of the intelligence community as a language analyst or intelligence analyst; and

''(B) educational counseling on the selection of courses to be so pursued; and

''(3) provide each individual so selected information on the opportunities available for employment in the intelligence community.

''(f) DURATION OF PROGRAM.—(1) The Director shall terminate the pilot program not later than six years after the date of the enactment of this Act [Oct. 28, 2004].

''(2) The termination of the pilot program under paragraph (1) shall not prevent the Director from continuing to provide assistance, counseling, and information under subsection (e) to individuals who are participating in the pilot program on the date of termination of the pilot program throughout the academic year in progress as of that date.''

NATIONAL SECURITY AGENCY ACT OF 1959

Pub. L. 86–36, May 29, 1959, 73 Stat. 63, as amended by Pub. L. 87–367, title II, §§201, 204, Oct. 4, 1961, 75 Stat. 789, 791; Pub. L. 87–793, §1001(c), Oct. 11, 1962, 76 Stat. 864; Sept. 23, 1950, ch. 1024, title III, §306(a), as added Mar. 26, 1964, Pub. L. 88–290, 78 Stat. 170; Aug. 14, 1964, Pub. L. 88–426, title III, §306(h), 78 Stat. 430; Oct. 6, 1964, Pub. L. 88–631, §3(d), 78 Stat. 1008; Sept. 6, 1966, Pub. L. 89–554, §8(a), 80 Stat. 660; Oct. 8, 1966, Pub. L. 89–632, §1(e), 80 Stat. 878; Pub. L. 91–187, §2, Dec. 30, 1969, 83 Stat. 850; Pub. L. 96–450, title IV, §402(a), Oct. 14, 1980, 94 Stat. 1977; Pub. L. 97–89, title VI, §§601–603, Dec. 4, 1981, 95 Stat. 1154–1156, eff. Oct. 1, 1981; Pub. L. 99–335, title V, §507(a), June 6, 1986, 100 Stat. 628; Pub. L. 99–569, title V, §505, Oct. 27, 1986, 100 Stat. 3200; Pub. L. 101–193, title V, §505(b), Nov. 30, 1989, 103 Stat. 1709; Pub. L. 101–194, title V, §506(c)(2), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 102–88, title V, §503, Aug. 14, 1991, 105 Stat. 436; Pub. L. 102–183, title IV, §405, Dec. 4, 1991, 105 Stat. 1267; Pub. L. 102–496, title III, §304(a), title IV, §405, title VIII, §803(b), Oct. 24, 1992, 106 Stat. 3183, 3186, 3253; Pub. L. 103–359, title VIII, §806(b)(2), Oct. 14, 1994, 108 Stat. 3442; Pub. L. 104–106, div. A, title X, §1064(b), Feb. 10, 1996, 110 Stat. 445; Pub. L. 104–201, div. A, title XVI, §1633(b)(1), Sept. 23, 1996, 110 Stat. 2751; Pub. L. 107–108, title V, §506, Dec. 28, 2001, 115 Stat. 1406; Pub. L. 107–306, title VIII, §841(f), Nov. 27, 2002, 116 Stat. 2432; Pub. L. 108–177, title III, §377(c), title V, §501, Dec. 13, 2003, 117 Stat. 2630, 2633; Pub. L. 108–487, title V, §501, Dec. 23, 2004, 118 Stat. 3950; Pub. L. 109–364, div. A, title IX, §933, Oct. 17, 2006, 120 Stat. 2363, provided: ''That this Act [this note] may be cited as the 'National Security Agency Act of 1959'. [Amended Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 660; Pub. L. 96–450, title IV, §402(a)(2), Oct. 14, 1980, 94 Stat. 1978.]

''[SEC. 2. Repealed. Pub. L. 104–201, div. A, title XVI, §1633(b)(1), Sept. 23, 1996, 110 Stat. 2751.]

''SEC. 3. [Amended section 1581(a) of Title 10, Armed Forces.]

''[SEC. 4. Repealed. Pub. L. 104–201, div. A, title XVI, §1633(b)(1), Sept. 23, 1996, 110 Stat. 2751.]

''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. 86–626, 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. 7. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 660.]

''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, 1932 ([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 periods 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 (50 U.S.C. 403 note) [50 U.S.C. 2001 et seq.] and in section 18 of the Central Intelligence Agency Act of 1949 [50 U.S.C. 403r].

''(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 not 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 subsection (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.

[Amended Pub. L. 102–496, title VIII, § 803(b), Oct. 24, 1992, 106 Stat. 3253. Amendment by Pub. L. 102–496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as an Effective Date note under section 2001 of this title.]

[Amended Pub. L. 101–193, title V, § 505(b), Nov. 30, 1989, 103 Stat. 1709.]

[Amended Pub. L. 99–335, title V, § 507(a), June 6, 1986, 100 Stat. 628. Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.]

[Amended Pub. L. 97–89, title VI, § 601, Dec. 4, 1981, 95 Stat. 1154.]

[Added Pub. L. 96–450, title IV, § 402(a)(1), Oct. 14, 1980, 94 Stat. 1977.]

''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 chapters 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.

''(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 with 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. 1978, and amended Pub. L. 97–89, title VI, §602, 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 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) 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 each 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.

''(d)(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, United States Code.

''(3) In this subsection, the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code. [Added Pub. L. 96–450, title IV, §402(a)(1), Oct. 14, 1980, 94 Stat. 1978; amended Pub. L. 107–108, title V, §506, Dec. 28, 2001, 115 Stat. 1406; Pub. L. 107–306, title VIII, §841(f), Nov. 27, 2002, 116 Stat. 2432; Pub. L. 108–177, title III, §377(c), title V, §501, Dec. 13, 2003, 117 Stat. 2630, 2633.]

''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 3132(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 5382 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 5384 of such title;

''(G) provide that members of the Senior Cryptologic Executive Service may be granted sabbatical leaves consistent with the provisions of section 3396(c) of such title.[;] and

''(H) provide for the recertification of members of the Senior Cryptologic Executive Service consistent with the provisions of section 3393a of such title.

''(2) Except as otherwise provided in subsection (a), the Secretary of Defense (or his designee) may—

''(A) make applicable to the Senior Cryptologic Executive Service any of the provisions 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 Director of the National Security Agency 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.

[Amended Pub. L. 104–106, div. A, title X, § 1064(b), Feb. 10, 1996, 110 Stat. 445.]

[Amended Pub. L. 101–194, title V, § 506(c)(2), Nov. 30, 1989, 103 Stat. 1759. Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as an Effective Date of 1989 Amendment note under section 3151 of Title 5, Government Organization and Employees.]

''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.) [31 U.S.C. 6301 et seq.] 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. 97–89, 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. 97–89, 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 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. [Added Pub. L. 97–89, title VI, § 603, Dec. 4, 1981, 95 Stat. 1156.]

''SEC. 16. (a) The purpose of this section is to establish an undergraduate training program, which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to the mission of the National Security Agency, including mathematics, computer science, engineering, and foreign languages.

''(b) The Secretary of Defense is authorized, in his discretion, to assign civilian employees of the National Security Agency as students at accredited professional, technical, and other institutions of higher learning for training at the undergraduate level in skills critical to effective performance of the mission of the Agency.

''(c) The National Security Agency may pay, directly or by reimbursement to employees, expenses incident to assignments under subsection (b), in any fiscal year only to the extent that appropriated funds are available for such purpose.

''(d)(1) To be eligible for assignment under subsection (b), an employee of the Agency must agree in writing—

''(A) to continue in the service of the Agency for the period of the assignment and to complete the educational course of training for which the employee is assigned;

''(B) to continue in the service of the Agency following completion of the assignment for a period of one-and-a-half years for each year of the assignment or part thereof;

''(C) to reimburse the United States for the total cost of education (excluding the employee's pay and allowances) provided under this section to the employee if, prior to the employee's completing the educational course of training for which the employee is assigned, the assignment or the employee's employment with the Agency is terminated either by the Agency due to misconduct by the employee or by the employee voluntarily; and

''(D) to reimburse the United States if, after completing the educational course of training for which the employee is assigned, the employee's employment with the Agency is terminated either by the Agency

due to misconduct by the employee or by the employee voluntarily, prior to the employee's completion of the service obligation period described in subparagraph (B), in an amount that bears the same ratio to the total cost of the education (excluding the employee's pay and allowances) provided to the employee as the unserved portion of the service obligation period described in subparagraph (B) bears to the total period of the service obligation described in subparagraph (B).

''(2) Subject to paragraph (3), the obligation to reimburse the United States under an agreement described in paragraph (1), including interest due on such obligation, is for all purposes a debt owing the United States.

''(3)(A) A discharge in bankruptcy under title 11, United States Code, shall not release a person from an obligation to reimburse the United States required under an agreement described in paragraph (1) if the final decree of the discharge in bankruptcy is issued within five years after the last day of the combined period of service obligation described in subparagraphs (A) and (B) of paragraph (1).

''(B) The Secretary of Defense may release a person, in whole or in part, from the obligation to reimburse the United States under an agreement described in paragraph (1) when, in his discretion, the Secretary determines that equity or the interests of the United States so require.

''(C) The Secretary of Defense shall permit an employee assigned under this section who, prior to commencing a second academic year of such assignment, voluntarily terminates the assignment or the employee's employment with the Agency, to satisfy his obligation under an agreement described in paragraph (1) to reimburse the United States by reimbursement according to a schedule of monthly payments which results in completion of reimbursement by a date five years after the date of termination of the assignment or employment or earlier at the option of the employee.

''(e)(1) When an employee is assigned under this section to an institution, the Agency shall disclose to the institution to which the employee is assigned that the Agency employs the employee and that the Agency funds the employee's education.

''(2) Agency efforts to recruit individuals at educational institutions for participation in the undergraduate training program established by this section shall be made openly and according to the common practices of universities and employers recruiting at such institutions.

''(f) Chapter 41 of title 5 and subsections (a) and (b) of section 3324 of title 31, United States Code, shall not apply with respect to this section.

''(g) The Secretary of Defense may issue such regulations as may be necessary to implement this section. [Added Pub. L. 99–569, title V, §505, Oct. 27, 1986, 100 Stat. 3200.]

''[SEC. 17. Repealed. Pub. L. 103–359, title VIII, §806(b)(2), Oct. 14, 1994, 108 Stat. 3442.]

''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. [Added Pub. L. 102–183, title IV, §405, Dec. 4, 1991, 105 Stat. 1267; amended Pub. L. 102–496, title III, §304(a), Oct. 24, 1992, 106 Stat. 3183.]

''SEC. 19. (a) There is established the National Security Agency Emerging Technologies Panel. The Panel is a standing panel of the National Security Agency. The Panel shall be appointed by, and shall report directly to, the Director of the National Security Agency.

''(b) The Panel shall study and assess, and periodically advise the Director on, the research, development, and application of existing and emerging science and technology advances, advances in encryption, and other topics.

''(c) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Panel. [Added Pub. L. 108–487, title V, §501, Dec. 23, 2004, 118 Stat. 3950.]

''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. 17, 2006, 120 Stat. 2363.]

[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.]

EXECUTIVE ORDER NO. 10483

Ex. Ord. No. 10483, Sept. 2, 1953, 18 F.R. 5379, as amended by Ex. Ord. No. 10598, Feb. 28, 1955, 20 F.R. 1237, which provided for an Operations Coordinating Board, was superseded by Ex. Ord. No. 10700, Feb. 25, 1957, formerly set out below.

EXECUTIVE ORDER NO. 10700

Ex. Ord. No. 10700, Feb. 25, 1957, 22 F.R. 1111, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. 10838, Sept. 16, 1959, 24 F.R. 7519, which provided for the Operations Coordinating Board, was revoked by Ex. Ord. No. 10920, Feb. 18, 1961, 26 F.R. 1463.

EX. ORD. NO. 13228. ESTABLISHING THE OFFICE OF HOMELAND SECURITY AND THE HOMELAND SECURITY COUNCIL

Ex. Ord. No. 13228, Oct. 8, 2001, 66 F.R. 51812, as amended by Ex. Ord. No. 13284, §3, Jan. 23, 2003, 68 F.R. 4075; Ex. Ord. No. 13286, §8, Feb. 28, 2003, 68 F.R. 10622, 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. *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 this order.

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 threats of terrorism against the United States and activities 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 collection of intelligence outside 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 infrastructure facilities after disruption by a terrorist threat or attack;

(ii) coordinate efforts to ensure rapid restoration of public and private critical 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 review plans and preparations 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 also 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 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.

SEC. 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.

SEC. 5. *Establishment of Homeland Security Council*.

(a) 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.

(b) 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 Chief of Staff to the Vice President, the Assistant to the President for National Security Affairs, the Counsel to the President, and the Director of the Office of Management and Budget also are invited to attend any Council meeting. The Secretary of State, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Energy, the Secretary of Labor, the Secretary of Commerce, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, the Assistant to the President for Economic Policy, and the Assistant to the President for Domestic Policy shall be invited to attend meetings pertaining to their responsibilities. The heads of other executive departments and agencies and other senior officials shall be invited to attend Council meetings when appropriate.

(c) The Council shall meet at the President's direction. When the President is absent from a meeting of the Council, at the President's direction the Vice President may preside. The Assistant to the President for Homeland Security shall be responsible, at the President's direction, for determining the agenda, ensuring that necessary papers are prepared, and recording Council actions and Presidential decisions.

SEC. 6. *Original Classification Authority*. I hereby delegate the authority to classify information originally as Top Secret, in accordance with Executive Order 12958 [50 U.S.C. 435 note] or any successor Executive Order, to the Assistant to the President for Homeland Security.

SEC. 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.

SEC. 8. *General Provisions*.

(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 or 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.

SEC. 9. [Amended Ex. Ord. No. 12656, set out as a note under section 5195 of this title.]

GEORGE W. BUSH.

EXECUTIVE ORDER NO. 13260

Ex. Ord. No. 13260, Mar. 19, 2002, 67 F.R. 13241, as amended by Ex. Ord. No. 13286, § 4, Feb. 28, 2003, 68 F.R. 10619, which established the President's Homeland Security Advisory Council and Senior Advisory Committees for Homeland Security, was revoked by Ex. Ord. No. 13286, § 4, Feb. 28, 2003, 68 F.R. 10619, eff. Mar. 31, 2003.

§ 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.

(5) The Attorney General.

(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.

(July 26, 1947, ch. 343, title I, § 101A, as added Pub. L. 108–458, title I, § 1031, Dec. 17, 2004, 118 Stat. 3677.)

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

The National Counterintelligence Executive under section 902 of the Counterintelligence Enhancement Act of 2002 [50 U.S.C. 402b] shall serve as the chairperson of the Board.

(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 [50 U.S.C. 402c(e)(2)].

(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 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—

(i) 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 employee covered by a notice under subparagraph (A) of an investigation described in that subparagraph without prior coordination and consultation with the Federal Bureau of Investigation.

(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 Senate and the Permanent Select Committee on Intelligence of the House of Representatives that such waiver has been issued, and 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 Depart-

ment 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[1] 1801(a) and (b), respectively, of this title.

(Pub. L. 103–359, title VIII, § 811, Oct. 14, 1994, 108 Stat. 3455; Pub. L. 106–120, title VI, § 602, Dec. 3, 1999, 113 Stat. 1620; Pub. L. 106–567, title VI, § 605, Dec. 27, 2000, 114 Stat. 2853; Pub. L. 107–306, title VIII, § 811(b)(5)(B), title IX, § 903, Nov. 27, 2002, 116 Stat. 2424, 2433; Pub. L. 108–177, title III, § 361(g), Dec. 13, 2003, 117 Stat. 2625; Pub. L. 108–458, title I, § 1071(g)(1), Dec. 17, 2004, 118 Stat. 3691.)

REFERENCES IN TEXT

The Counterintelligence Enhancement Act of 2002, referred to in subsec. (d)(1)(B)(i), is title IX of Pub. L. 107–306, Nov. 27, 2002, 116 Stat. 2432, which enacted sections 402b and 402c of this title, amended this section, and enacted provisions set out as a note under section 402b of this title. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 401 of this title and Tables.

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

2004—Subsec. (c)(6)(C). Pub. L. 108–458, which directed amendment of subsec. (c)(6)(C) by substituting ''Director of National Intelligence'' for ''Director of Central Intelligence'', could not be executed because of the amendments by Pub. L. 107–306, § 903(a)(2), and Pub. L. 108–177. See 2002 and 2003 Amendment notes below.

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 415b 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.''

Subsec. (c). Pub. L. 107–306, § 903(b), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (c)(6). Pub. L. 107–306, § 811(b)(5)(B), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The Director of the Federal Bureau of Investigation shall, in consultation with the Director of Central Intelligence and the Secretary of Defense, report annually, beginning on February 1, 1995, and continuing each year thereafter, to the Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives and, in accordance with applicable security procedures, the Committees on the Judiciary of the House of Representatives and the Senate with respect to compliance with paragraphs (1) and (2) during the previous calendar year.''

Subsec. (d). Pub. L. 107–306, § 903(c), added subsec. (d).

Subsec. (e). Pub. L. 107–306, § 903(a)(2), redesignated subsec. (c) as (e).

2000—Subsec. (c)(1). Pub. L. 106–567, § 605(a)(1), substituted ''paragraph (5)'' for ''paragraph (3)''.

Subsec. (c)(2). Pub. L. 106–567, § 605(a)(1), (b), substituted ''paragraph (5)'' for ''paragraph (3)'' and inserted ''in a timely manner'' after ''through appropriate channels'' and ''are consulted''.

Subsec. (c)(3). Pub. L. 106–567, § 605(a)(3), added par. (3). Former par. (3) redesignated (5).

Subsec. (c)(4). Pub. L. 106–567, § 605(a), (c), added par. (4). Former par. (4) redesignated (6).

Subsec. (c)(5). Pub. L. 106–567, § 605(a)(2), (4), redesignated par. (3) as (5) and substituted ''paragraph (1), (2), or (3)'' for ''paragraph (1) or (2)''. Former par. (5) redesignated (7).

Subsec. (c)(6) to (8). Pub. L. 106–567, § 605(a)(2), redesignated pars. (4) to (6) as (6) to (8), respectively.

1999—Subsec. (c)(2). Pub. L. 106–120 struck out ''after a report has been provided pursuant to paragraph (1)(A)'' before period at end.

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; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by 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.

ANNUAL REPORTS ON INTELLIGENCE ACTIVITIES OF THE PEOPLE'S REPUBLIC OF CHINA

Pub. L. 105–107, title III, § 308, Nov. 20, 1997, 111 Stat. 2253, as amended by Pub. L. 107–306, title VIII, § 811(b)(5)(D), Nov. 27, 2002, 116 Stat. 2424, related to annual reports to Congress by the Director of Central Intelligence and the Director of the Federal Bureau of Investigation on intelligence activities of the People's Republic of China directed against or affecting the interests of the United States, prior to repeal by Pub. L. 108–177, title III, § 361(f), Dec. 13, 2003, 117 Stat. 2625.

§ 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

[1] So in original. Probably should be ''section''.

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.

(Pub. L. 107–306, title IX, §902, Nov. 27, 2002, 116 Stat. 2432; Pub. L. 108–458, title I, §1072(d)(1)(B), Dec. 17, 2004, 118 Stat. 3693.)

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

2004—Subsec. (a)(1). Pub. L. 108–458, §1072(d)(1)(B)(i), substituted ''Director of National Intelligence'' for ''President''.

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''.

Subsec. (c). Pub. L. 108–458, §1072(d)(1)(B)(i), substituted ''Director of National Intelligence'' for ''President'' in two places.

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; Transition Provisions note under section 401 of this title.

PURPOSE

Pub. L. 107–306, title IX, §901(b), Nov. 27, 2002, 116 Stat. 2432, provided that: ''The purpose of this title [enacting this section and section 402c of this title, amending section 402a of this title, and enacting provisions set out as a note under section 401 of this title] is to facilitate the enhancement of the counterintelligence activities of the United States Government by—

''(1) enabling the counterintelligence community of the United States Government to fulfill better its mission of identifying, assessing, prioritizing, and countering the intelligence threats to the United States;

''(2) ensuring that the counterintelligence community of the United States Government acts in an efficient and effective manner; and

''(3) providing for the integration of all the counterintelligence activities of the United States Government.''

§ 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) General Counsel

(1) There shall be in the Office of the National Counterintelligence Executive a general counsel who shall serve as principal legal advisor to the National Counterintelligence Executive.

(2) The general counsel shall—

(A) provide legal advice and counsel to the Executive on matters relating to functions of the Office;

(B) ensure that the Office complies with all applicable laws, regulations, Executive orders, and guidelines; and

(C) carry out such other duties as the Executive may specify.

(e) 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 (f) of this section, 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 (f) of this section, 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.

(f) Additional requirements regarding National Threat Identification and Prioritization Assessment and National Counterintelligence Strategy

(1) A National Threat Identification and Prioritization Assessment under subsection (e)(1) of this section, and any modification of such assessment, shall not go into effect until approved by the President.

(2) A National Counterintelligence Strategy under subsection (e)(2) of this section, and any modification of such strategy, shall not go into effect until approved by the President.

(3) The National Counterintelligence Executive shall submit to the congressional intelligence committees each National Threat Identification and Prioritization Assessment, or modification thereof, and each National Counterintelligence Strategy, or modification thereof, approved under this section.

(4) In this subsection, 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.

(g) Personnel

(1) Personnel of the Office of the National Counterintelligence Executive may consist of personnel employed by the Office or personnel on detail from any other department, agency, or element of the Federal Government. Any such detail may be on a reimbursable or nonreimbursable basis, at the election of the head of the agency detailing such personnel.

(2) Notwithstanding section 104(d)[1] 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.

(3) The employment of personnel by the Office, including the appointment, compensation and benefits, management, and separation of such personnel, shall be governed by the provisions of law on such matters with respect to the person-

[1] See References in Text note below.

nel of the Central Intelligence Agency, except that, for purposes of the applicability of such provisions of law to personnel of the Office, the National Counterintelligence Executive shall be treated as the head of the Office.

(4) Positions in the Office shall be excepted service positions for purposes of title 5.

(h) Support

(1) The Attorney General, Secretary of Defense, and Director of National Intelligence may each provide the Office of the National Counterintelligence Executive such support as may be necessary to permit the Office to carry out its functions under this section.

(2) Subject to any terms and conditions specified by the Director of National Intelligence, the Director may provide administrative and contract support to the Office as if the Office were an element of the Central Intelligence Agency.

(3) Support provided under this subsection may be provided on a reimbursable or nonreimbursable basis, at the election of the official providing such support.

(i) Availability of funds for reimbursement

The National Counterintelligence Executive may, from amounts available for the Office, transfer to a department or agency detailing personnel under subsection (g) of this section, or providing support under subsection (h) of this section, on a reimbursable basis amounts appropriate to reimburse such department or agency for the detail of such personnel or the provision of such support, as the case may be.

(j) Contracts

(1) Subject to paragraph (2), the National Counterintelligence Executive may enter into any contract, lease, cooperative agreement, or other transaction that the Executive considers appropriate to carry out the functions of the Office of the National Counterintelligence Executive under this section.

(2) The authority under paragraph (1) to enter into contracts, leases, cooperative agreements, and other transactions shall be subject to any terms, conditions, and limitations applicable to the Central Intelligence Agency under law with respect to similar contracts, leases, cooperative agreements, and other transactions.

(k) 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.

***(l)* 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.

(m) Construction

Nothing in this section shall be construed as affecting the authority of the Director of National Intelligence, the Secretary of Defense, the Secretary of State, the Attorney General, or the Director of the Federal Bureau of Investigation as provided or specified under the National Security Act of 1947 or under other provisions of law.

(Pub. L. 107–306, title IX, §904, Nov. 27, 2002, 116 Stat. 2434; Pub. L. 108–458, title I, §§1071(g)(2)(B), 1072(d)(1)(C), Dec. 17, 2004, 118 Stat. 3691, 3693.)

REFERENCES IN TEXT

Section 104(d), referred to in subsec. (g)(2), is section 104(d) of Pub. L. 107–306, title I, Nov. 27, 2002, 116 Stat. 2387, which is not classified to the Code.

The National Security Act of 1947, referred to in subsec. (m), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. 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 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

2004—Subsec. (c). Pub. L. 108–458, §1072(d)(1)(C)(i), substituted ''Office of the Director of National Intelligence'' for ''Office of the Director of Central Intelligence''.

Subsec. (e)(4). Pub. L. 108–458, §1071(g)(2)(B)(i), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (e)(5). Pub. L. 108–458, §1071(g)(2)(B)(ii), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in introductory provisions.

Subsec. (h)(1), (2). Pub. L. 108–458, §1071(g)(2)(B)(iii), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (*l*). Pub. L. 108–458, §1072(d)(1)(C)(ii), substituted ''Office of the Director of National Intelligence'' for ''Office of the Director of Central Intelligence'' in introductory provisions.

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.

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; Transition Provisions 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.

(July 26, 1947, ch. 343, title I, § 102, as added Pub. L. 108–458, title I, § 1011(a), Dec. 17, 2004, 118 Stat. 3644.)

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

A prior section 403, act July 26, 1947, ch. 343, title I, § 102, as added and amended Pub. L. 104–293, title VIII, §§ 805(a), 809(a), 810, 811, Oct. 11, 1996, 110 Stat. 3477, 3481, 3482; Pub. L. 105–107, title IV, § 405, Nov. 20, 1997, 111 Stat. 2261; Pub. L. 105–272, title III, § 306, Oct. 20, 1998, 112 Stat. 2401, related to Office of the Director of Central Intelligence prior to repeal by Pub. L. 108–458, title I, §§ 1011(a), 1097(a), Dec. 17, 2004, 118 Stat. 3643, 3698, effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided. See section 403–4a of this title.

Another prior section 403, acts July 26, 1947, ch. 343, title I, § 102, 61 Stat. 497; Apr. 4, 1953, ch. 16, 67 Stat. 19; Oct. 24, 1992, Pub. L. 102–496, title VII, § 704, 106 Stat. 3189; Jan. 6, 1996, Pub. L. 104–93, title VII, § 701, 109 Stat. 977; Feb. 10, 1996, Pub. L. 104–106, div. A, title V, § 570, 110 Stat. 353, related to establishment of Central Intelligence Agency and appointment and functions of its Director and Deputy Director prior to repeal by Pub. L. 104–293, title VIII, § 805(a), Oct. 11, 1996, 110 Stat. 3477.

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. 2651);

''(B) title II of the Department of Energy Organization Act (42 U.S.C. 7131 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, 503 of title 28, and 301(b) of title 31, United States Code.''

IMPROVEMENT OF EQUALITY OF EMPLOYMENT OPPORTUNITIES IN THE INTELLIGENCE COMMUNITY

Pub. L. 108–177, title III, § 319, Dec. 13, 2003, 117 Stat. 2614, as amended by Pub. L. 108–458, title I, § 1071(g)(3)(A)(iv), (B), Dec. 17, 2004, 118 Stat. 3692, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(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 in 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.

''(b) PILOT PROJECT TO PROMOTE EQUALITY OF EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITIES THROUGHOUT THE INTELLIGENCE COMMUNITY USING INNOVATIVE METHODOLOGIES.—The Director of National Intelligence shall carry out a pilot project under this section to test and evaluate alternative, innovative methods to promote equality of employment opportunities in the intelligence community for women, minorities, and individuals with diverse ethnic and cultural backgrounds, skills, language proficiency, and expertise.

''(c) METHODS.—In carrying out the pilot project, the Director shall employ methods to increase diversity of officers and employees in the intelligence community.

''(d) DURATION OF PROJECT.—The Director shall carry out the project under this section for a 3-year period.

''(e) REPORT.—Not later than 2 years after the date the Director implements the pilot project under this section, the Director shall submit to Congress a report on the project. The report shall include—

''(1) an assessment of the effectiveness of the project; and

''(2) recommendations on the continuation of the project, as well recommendations as for improving the effectiveness of the project in meeting the goals of promoting equality of employment opportunities in the intelligence community for women, minorities, and individuals with diverse ethnic and cultural backgrounds, skills, language proficiency, and expertise.

''(f) DIVERSITY PLAN.—(1) Not later than February 15, 2004, the Director of Central Intelligence shall submit to Congress a report which describes the plan of the Director, entitled the 'DCI Diversity Strategic Plan', and any subsequent revision to that plan, to increase diversity of officers and employees in the intelligence community, including the short- and long-term goals of the plan. The report shall also provide a detailed description of the progress that has been made by each element of the intelligence community in implementing the plan.

''(2) In implementing the plan, the Director of National Intelligence shall incorporate innovative methods for recruitment and hiring that the Director has determined to be effective from the pilot project carried out under this section.

''(g) INTELLIGENCE COMMUNITY DEFINED.—In this section, 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. 401(4) [401a(4)]).''

REPORT ON LESSONS LEARNED FROM MILITARY OPERATIONS IN IRAQ

Pub. L. 108–177, title III, §357, Dec. 13, 2003, 117 Stat. 2621, as amended by Pub. L. 108–458, title I, §1071(g)(3)(A)(vi), Dec. 17, 2004, 118 Stat. 3692, provided that:

''(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 'appropriate committees of Congress' means—

''(1) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives; and

''(2) the Select Committee on Intelligence and the Committee on Armed Services of the Senate.''

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, as amended by Pub. L. 90–539, Sept. 30, 1968, 82 Stat. 902; Pub. L. 91–185, Dec. 30, 1969, 83 Stat. 847; Pub. L. 91–626, §§1–6, Dec. 31, 1970, 84 Stat. 1872–1874; Pub. L. 93–31, May 8, 1973, 87 Stat. 65; Pub. L. 93–210, §1(a), Dec. 28, 1973, 87 Stat. 908; Pub. L. 94–361, title VIII, §801(b), July 14, 1976, 90 Stat. 929; Pub. L. 94–522, title I, §§101, 102, title II, §§201–213, Oct. 17, 1976, 90 Stat. 2467–2471; Ex. Ord. No. 12273, Jan. 16, 1981, 46 F.R. 5854; Ex. Ord. No. 12326, Sept. 30, 1981, 46 F.R. 48889; Pub. L. 97–269, title VI, §§602–611, Sept. 27, 1982, 96 Stat. 1145–1148, 1152–1153; Ex. Ord. No. 12443, Sept. 27, 1983, 48 F.R. 44751; Ex. Ord. No. 12485, July 13, 1984, 49 F.R. 28827; Pub. L. 98–618, title III, §302, Nov. 8, 1984, 98 Stat. 3300; Pub. L. 99–169, title VII, §702, Dec. 4, 1985, 99 Stat. 1008; Pub. L. 99–335, title V, §§501–506, June 6, 1986, 100 Stat. 622–624; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–569, title III, §302(a), Oct. 27, 1986, 100 Stat. 3192; Pub. L. 100–178, title IV, §§401(a), 402(a), (b)(1), (2), Dec. 2, 1987, 101 Stat. 1012–1014; Pub. L. 100–453, title III, §302(a), (b)(1), (c)(1), (d)(1), (2), title V, §502, Sept. 29, 1988, 102 Stat. 1906, 1907, 1909; Pub. L. 101–193, title III, §§302–304(a), 307(b), Nov. 30, 1989, 103 Stat. 1703, 1707; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–88, title III, §§302–305(a), 306–307(b), Aug. 14, 1991, 105 Stat. 431–433; Pub. L. 102–183, title III, §§302(a)–(c), 303(a), 304–306(b), 307, 309(a), 310(a), Dec. 4, 1991, 105 Stat. 1262–1266; Pub. L. 102–496, title III, §304(b), Oct. 24, 1992, 106 Stat. 3183, known as the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, was revised generally by Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196. As so revised, Pub. L. 88–643, now known as the Central Intelligence Agency Retirement Act, has been transferred to chapter 38 (§2001 et seq.) of this title. All notes, Executive orders, and other provisions relating to this Act have been transferred to section 2001 of this title.

EXECUTIVE ORDER NO. 10656

Ex. Ord. No. 10656, Feb. 6, 1956, 21 F.R. 859, which established the President's Board of Consultants on Foreign Intelligence Activities, was revoked by Ex. Ord. No. 10938, May 4, 1961, 26 F.R. 3951, formerly set out below.

EXECUTIVE ORDER NO. 10938

Ex. Ord. No. 10938, May 4, 1961, 26 F.R. 3951, which established the President's Foreign Intelligence Advisory Board, was revoked by Ex. Ord. No. 11460, Mar. 20, 1969, 34 F.R. 5535, formerly set out below.

EXECUTIVE ORDER NO. 11460

Ex. Ord. No. 11460, Mar. 20, 1969, 34 F.R. 5535, which established the President's Foreign Intelligence Advisory Board, was revoked by Ex. Ord. No. 11984, May 4, 1977, 42 F.R. 23129, set out below.

EX. ORD. NO. 11984. ABOLITION OF PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

Ex. Ord. No. 11984, May 4, 1977, 42 F.R. 23129, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to abolish the President's Foreign Intelligence Advisory Board, Executive Order No. 11460 of March 20, 1969, is hereby revoked.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12331

Ex. Ord. No. 12331, Oct. 20, 1981, 46 F.R. 51705, which established the President's Foreign Intelligence Advisory Board, was revoked by Ex. Ord. No. 12537, Oct. 28, 1985, 50 F.R. 45083, formerly set out below.

EXECUTIVE ORDER NO. 12537

Ex. Ord. No. 12537, Oct. 28, 1985, 50 F.R. 45083, as amended by Ex. Ord. No. 12624, Jan. 6, 1988, 53 F.R. 489, which established the President's Foreign Intelligence Advisory Board, was revoked by Ex. Ord. No. 12863, §3.3, Sept. 13, 1993, 58 F.R. 48441, formerly set out as a note under section 401 of this title.

§ 403–1. Responsibilities and authorities of the Director of National Intelligence

(a) Provision of intelligence

(1) The Director of National Intelligence shall be responsible for ensuring that national intelligence is provided—

(A) to the President;

(B) to the heads of departments and agencies of the executive branch;

(C) to the Chairman of the Joint Chiefs of Staff and senior military commanders;

(D) to the Senate and House of Representatives and the committees thereof; and

(E) to such other persons as the Director of National Intelligence determines to be appropriate.

(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 budgets for the Joint Military Intelligence Program and for Tactical Intelligence and Related Activities.

(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 Joint Military Intelligence Program.

(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 to another such program.

(3) The Director of National Intelligence may only transfer or reprogram funds referred to in subparagraph (A)—[1]

(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 or personnel 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 or agency involved 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;

(ii) 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.

[1] So in original. Probably should be ''paragraph (1)(A)—''.

(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) 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 details of personnel to national intelligence centers, and between elements of the intelligence community;

(ii) set standards for education, training, and career development of personnel of the intelligence community;

(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) The Director of National Intelligence shall perform such other functions as the President may direct.

(8) 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; and

(F) have procurement approval authority over all enterprise architecture-related information technology items funded in the National Intelligence Program.

(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 material 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 subsection 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 compartmented 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 contracts 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 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.

***(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 Counterterrorism 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 intelligence community who are assigned or detailed under paragraph (1)(A) to service under the Director of National Intelligence shall be promoted at rates equivalent to or better than personnel of such element who are not so assigned or detailed.

(B) The Director may prescribe regulations to carry out this section.

(3)(A) The Director of National Intelligence shall prescribe mechanisms to facilitate the rotation of personnel of the intelligence community through various elements of the intelligence community in the course of their careers in order to facilitate the widest possible understanding by such personnel of the variety of intelligence requirements, methods, users, and capabilities.

(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)(3) 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, to the same extent, and subject to the same conditions and limitations, that the Director of the Central Intelligence Agency may exercise such authority with respect to personnel of the Central Intelligence Agency.

(2) Employees and applicants for employment of the Office of the Director of National Intelligence shall have the same rights and protections under the Office of the Director of National Intelligence as employees of the Central Intelligence Agency have 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 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).

(D) Each determination or decision required by an authority referred to in the second sentence of section 3(d) of the Central Intelligence Agency Act of 1949 [50 U.S.C. 403c(d)] shall be based upon written findings made by the official making such determination or decision, which findings shall be final and shall be available within the Office of the Director of National Intelligence for a period of at least six years following the date of such determination or decision.

(*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;

(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 403(9) 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.

(July 26, 1947, ch. 343, title I, §102A, as added Pub. L. 108–458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3644.)

REFERENCES IN TEXT

The Congressional Budget and Impoundment Control Act of 1974, referred to in subsec. (c)(6), is Pub. L. 93–344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (f)(6), (8), is Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to 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. (f)(8), was in the original ''this title'', meaning title I of act July 26, 1947, ch. 343, 61 Stat. 496, as amended, which is classified generally to this subchapter. For complete classification of title I to the Code, see Tables.

The Goldwater-Nichols Department of Defense Reorganization Act of 1986, referred to in subsec. (*l*)(3)(C), is Pub. L. 99–433, Oct. 1, 1986, 100 Stat. 992, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 111 of Title 10, Armed Forces, and Tables.

The Central Intelligence Agency Act of 1949, referred to in subsecs. (m) and (n)(1), is act June 20, 1949, ch. 227, 63 Stat. 208, 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.

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.

11, 1996, 110 Stat. 3479, provided there is a Central Intelligence Agency and described its function prior to repeal by Pub. L. 108–458, title I, §§ 1011(a), 1097(a), Dec. 17, 2004, 118 Stat. 3643, 3698, effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided. See section 403–4 of this title.

Another prior section 403–1, act July 26, 1947, ch. 343, title I, § 102a, as added Dec. 9, 1983, Pub. L. 98–215, title IV, § 403, 97 Stat. 1477, related to appointment of Director of the Intelligence Community Staff prior to repeal by Pub. L. 102–496, title VII, § 705(a)(1), Oct. 24, 1992, 106 Stat. 3190.

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.

JOINT PROCEDURES FOR OPERATIONAL COORDINATION BETWEEN DEPARTMENT OF DEFENSE AND CENTRAL INTELLIGENCE AGENCY

Pub. L. 108–458, title I, § 1013, Dec. 17, 2004, 118 Stat. 3662, provided that:

''(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 in the 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 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

Pub. L. 108–458, title I, § 1017, Dec. 17, 2004, 118 Stat. 3670, provided that:

''(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, § 1052(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

Pub. L. 108–458, title VII, § 7201(e), Dec. 17, 2004, 118 Stat. 3813, provided that:

''(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

Pub. L. 108–458, title VIII, § 8101, Dec. 17, 2004, 118 Stat. 3864, provided that:

''(a) IN GENERAL.—The Director of National Intelligence shall establish a formal relationship, including 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

Pub. L. 108–177, title III, § 317, Dec. 13, 2003, 117 Stat. 2611, as amended by Pub. L. 108–458, title I, §§ 1071(g)(3)(A)(i), (ii), 1072(d)(2)(A), Dec. 17, 2004, 118 Stat. 3692, 3693, provided that:

''(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

Pub. L. 107–306, title III, §352, Nov. 27, 2002, 116 Stat. 2401, as amended by Pub. L. 108–458, title I, §1071(g)(2)(D), Dec. 17, 2004, 118 Stat. 3691, provided that:

''(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 communications among the elements 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, §309, 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 use of 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.]

PERIODIC REPORTS ON EXPENDITURES

Pub. L. 104–293, §807(c), Oct. 11, 1996, 110 Stat. 3480, provided that: ''Not later than January 1, 1997, the Director of Central Intelligence and the Secretary of Defense shall prescribe guidelines to ensure prompt reporting to the Director and the Secretary on a periodic basis of budget execution data 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.]

DATABASE PROGRAM TRACKING

Pub. L. 104–293, title VIII, § 807(d), Oct. 11, 1996, 110 Stat. 3481, provided that: ''Not later than January 1, 1999, 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 justification 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.

(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;

(C) 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.

(Pub. L. 108–458, title I, § 1019, Dec. 17, 2004, 118 Stat. 3671.)

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.

SAFEGUARD OF OBJECTIVITY IN INTELLIGENCE ANALYSIS

Pub. L. 108–458, title I, §1020, Dec. 17, 2004, 118 Stat. 3672, provided that:

''(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.

(Pub. L. 108–458, title I, §1041, Dec. 17, 2004, 118 Stat. 3678.)

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

Pub. L. 109–364, div. A, title IX, §944(a)(1), Oct. 17, 2006, 120 Stat. 2366, provided that: ''Administration of the pilot project on the establishment of a Civilian Linguist Reserve Corps required by section 613 of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108–487; 118 Stat. 3959; 50 U.S.C. 403–1b note) is hereby transferred from the Director of National Intelligence to the Secretary of Defense.''

Pub. L. 109–163, div. A, title XI, §1124, Jan. 6, 2006, 119 Stat. 3454, provided that: ''Subject to the availability of appropriated funds, the Secretary of Defense may support implementation of the Civilian Linguist Reserve Corps pilot project authorized by section 613 of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108–487; 118 Stat. 3959; 50 U.S.C. 403–1b note).''

Pub. L. 108–487, title VI, §613, Dec. 23, 2004, 118 Stat. 3959, as amended by Pub. L. 109–364, div. A, title IX, §944(a)(2), (b)–(e), Oct. 17, 2006, 120 Stat. 2366, provided that:

''(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 such 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 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. 2393), 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 Fund becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby.

(2) An annuitant so reemployed shall not be considered an employee for the purposes of chapter 83 or 84 of title 5.

(f) Treatment under Office of Director of National Intelligence personnel ceiling

A member of the National Intelligence Reserve Corps who is reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Office of the Director of National Intelligence.

(Pub. L. 108–458, title I, § 1053, Dec. 17, 2004, 118 Stat. 3683.)

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.

§ 403–2. Intelligence Community contracting

The Director of Central 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. For purposes of this provision, the term ''Intelligence Community'' has the same meaning as set forth in paragraph 3.4(f) of Executive Order 12333, dated December 4, 1981, or successor orders.

(Pub. L. 102–183, title IV, § 403, Dec. 4, 1991, 105 Stat. 1267.)

REFERENCES IN TEXT

Executive Order 12333, referred to in text, is set out as a note under section 401 of this title.

CODIFICATION

Section was enacted as part of the authorization act cited as the credit to this section, and not as part of the National Security Act of 1947 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior authorization act: Pub. L. 102–88, title IV, § 404, Aug. 14, 1991, 105 Stat. 434.

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.

§ 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.

(b) As used in this section, the term ''intelligence community'' has the same meaning given that term in section 401a(4) of this title.

(Pub. L. 103–335, title VIII, § 8131, Sept. 30, 1994, 108 Stat. 2653.)

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 Central 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 Central 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

(B) 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 Central 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 Central 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 Central Intelligence 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.

(Pub. L. 103–359, title VI, § 602, Oct. 14, 1994, 108 Stat. 3432; Pub. L. 108–177, title III, § 314, Dec. 13, 2003, 117 Stat. 2610.)

REFERENCES IN TEXT

Section 601, referred to in subsec. (c), means section 601 of Pub. L. 103–359, title VI, Oct. 14, 1994, 108 Stat. 3431, which is not classified to the Code.

CODIFICATION

Section was enacted 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. (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).

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.

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. 401a(4)).''

§ 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, the National Security Act of 1947 (50 U.S.C. 401 et seq.), 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) Such other offices and officials as may be established by law or the Director may establish 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 Central 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) Limitation on co-location with other elements of intelligence community

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.

(July 26, 1947, ch. 343, title I, § 103, as added Pub. L. 108–458, title I, § 1011(a), Dec. 17, 2004, 118 Stat. 3655.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), probably means Pub. L. 108–458, Dec. 17, 2004, 118 Stat. 3638, known as the Intelligence Reform and Terrorism Prevention Act of 2004. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 401 of this title and Tables.

The National Security Act of 1947, referred to in subsec. (b), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

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

A prior section 403–3, act July 26, 1947, ch. 343, title I, § 103, as added Pub. L. 102–496, title VII, § 705(a)(3), Oct. 24, 1992, 106 Stat. 3190; amended Pub. L. 103–178, title V, § 502, Dec. 3, 1993, 107 Stat. 2038; Pub. L. 104–293, title VIII, §§ 806, 807(a), Oct. 11, 1996, 110 Stat. 3479, 3480; Pub. L. 107–56, title IX, § 901, Oct. 26, 2001, 115 Stat. 387, related to responsibilities of Director of Central Intelligence, prior to repeal by Pub. L. 108–458, title I, §§ 1011(a), 1097(a), Dec. 17, 2004, 118 Stat. 3643, 3698, effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided. See sections 403–1 and 403–4a of this title.

Another prior section 103 of act July 26, 1947, was renumbered section 107 and is classified to section 404 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.

§ 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.

(6) The Principal Deputy Director of National Intelligence shall act for, and exercise the powers of, the Director of National Intelligence during the absence or disability of the Director of National Intelligence or during a vacancy in the position of Director of National Intelligence.

(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.

(July 26, 1947, ch. 343, title I, §103A, as added Pub. L. 108–458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3656.)

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 responsibil-

ities 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.

(July 26, 1947, ch. 343, title I, § 103B, as added Pub. L. 108–458, title I, § 1011(a), Dec. 17, 2004, 118 Stat. 3657.)

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.

(July 26, 1947, ch. 343, title I, § 103C, as added Pub. L. 108–458, title I, § 1011(a), Dec. 17, 2004, 118 Stat. 3658.)

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 incorporated in the policies and procedures developed for and implemented by the Office of the Director of National Intelligence and the elements of the intelligence community within the National Intelligence Program;

(2) oversee compliance by the Office and the Director of National Intelligence with requirements under the Constitution and all laws, regulations, Executive orders, and implementing guidelines relating to civil liberties and privacy;

(3) review and assess complaints and other information indicating possible abuses of civil liberties and privacy in the administration of the programs and operations of the Office and the Director of National Intelligence and, as appropriate, investigate any such complaint or information;

(4) ensure that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(5) ensure that personal information contained in a system of records subject to section 552a of title 5 (popularly referred to as the ''Privacy Act''), is handled in full compliance with fair information practices as set out in that section;

(6) conduct privacy impact assessments when appropriate or as required by law; and

(7) perform such other duties as may be prescribed by the Director of National Intelligence or specified by law.

(c) Use of agency Inspectors General

When appropriate, the Civil Liberties Protection Officer may refer complaints to the Office of Inspector General having responsibility for the affected element of the department or agency of the intelligence community to conduct an investigation under paragraph (3) of subsection (b) of this section.

(July 26, 1947, ch. 343, title I, §103D, as added Pub. L. 108–458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3658.)

REFERENCES IN TEXT

The Privacy Act, referred to in subsec. (b)(5), probably means the Privacy Act of 1974, Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 552a of Title 5 and Tables.

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.

§ 403–3e. Director of Science and Technology

(a) Director of Science and Technology

There is a Director of Science and Technology within the Office of the Director of National Intelligence who shall be appointed by the Director of National Intelligence.

(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.

(July 26, 1947, ch. 343, title I, §103E, as added Pub. L. 108–458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3659.)

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.

§ 403–3f. National Counterintelligence Executive

(a) National Counterintelligence Executive

The National Counterintelligence Executive under section 902 of the Counterintelligence Enhancement Act of 2002 [50 U.S.C. 402b] is a component of the Office of the Director of National Intelligence.

(b) Duties

The National Counterintelligence Executive shall perform the duties provided in the Counterintelligence Enhancement Act of 2002 and such other duties as may be prescribed by the Director of National Intelligence or specified by law.

(July 26, 1947, ch. 343, title I, §103F, as added Pub. L. 108–458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3660.)

REFERENCES IN TEXT

The Counterintelligence Enhancement Act of 2002, referred to in subsec. (b), is title IX of Pub. L. 107–306, Nov. 27, 2002, 116 Stat. 2432, which enacted sections 402b and 402c of this title, amended section 402a of this title, and enacted provisions set out as notes under sections 401 and 402b of this title. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 401 of this title and Tables.

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 who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Chief Information Officer of intelligence community

The Chief Information Officer shall serve as the chief information officer of the intelligence community.

(c) Duties and responsibilities

Subject to the direction of the Director of National Intelligence, the Chief Information Officer 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.

(d) Prohibition on simultaneous service as other chief information officer

An individual serving in the position of Chief Information Officer 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.

(July 26, 1947, ch. 343, title I, § 103G, as added Pub. L. 108–487, title III, § 303(a)(1), Dec. 23, 2004, 118 Stat. 3944.)

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.

EFFECTIVE DATE

Pub. L. 108–487, title III, § 303(b), Dec. 23, 2004, 118 Stat. 3944, provided that: ''The amendments made by this section [enacting this section] shall take effect on the effective date of the National Security Intelligence Reform Act of 2004 [see section 1097 of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transfer, Termination, and Transition Provisions note under section 401 of this title], as provided in section 801 of this Act [set out in an Effective Date of 2004 Amendments note under section 2656f of Title 22, Foreign Relations and Intercourse].''

§ 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 403–4a(c) of this title.

(July 26, 1947, ch. 343, title I, § 104, as added Pub. L. 108–458, title I, § 1011(a), Dec. 17, 2004, 118 Stat. 3660.)

PRIOR PROVISIONS

A prior section 403–4, act July 26, 1947, ch. 343, title I, § 104, as added Pub. L. 102–496, title VII, § 705(a)(3), Oct. 24, 1992, 106 Stat. 3192; amended Pub. L. 104–106, div. A, title XV, § 1502(f)(5), Feb. 10, 1996, 110 Stat. 510; Pub. L. 104–293, title VIII, § 807(b), Oct. 11, 1996, 110 Stat. 3480; Pub. L. 106–65, div. A, title X, § 1067(16), Oct. 5, 1999, 113 Stat. 775; Pub. L. 106–567, title I, § 105, Dec. 27, 2000, 114 Stat. 2834; Pub. L. 107–306, title III, §§ 321, 353(b)(1)(A), (4), Nov. 27, 2002, 116 Stat. 2391, 2402, related to authorities of Director of Central Intelligence, prior to repeal by Pub. L. 108–458, title I, §§ 1011(a), 1097(a), Dec. 17, 2004, 118 Stat. 3643, 3698, effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided. See sections 403–1 and 403–4a of this title.

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. 108–177, title IV, § 405(c), Dec. 13, 2003, 117 Stat. 2633, required the Director of Central Intelligence to submit to the congressional intelligence committees a report on the compensation of Central Intelligence Agency employees participating in the pilot project under section 402(b) of Pub. L. 107–306, formerly set out below.

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

Pub. L. 105–272, title III, § 309, Oct. 20, 1998, 112 Stat. 2403, provided that:

''(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 Directorate of Operations 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.

(July 26, 1947, ch. 343, title I, § 104A, as added Pub. L. 108–458, title I, § 1011(a), Dec. 17, 2004, 118 Stat. 3660; amended Pub. L. 108–487, title VI, § 611(a), Dec. 23, 2004, 118 Stat. 3954.)

AMENDMENTS

2004—Subsec. (g). Pub. L. 108–487 added subsec. (g).

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 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.

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 Director of Central Intelligence shall prescribe regulations requiring each employee of the Central Intelligence Agency designated by the Director for such purpose to sign a written agreement restricting the activities of the employee upon ceasing employment with the Central Intelligence Agency. The Director may designate a group or class of employees for such purpose.

''(b) AGREEMENT ELEMENTS.—The regulations shall provide that an agreement contain provisions specifying that the employee concerned not represent or advise the government, or any political party, of any foreign country during the three-year period beginning on the cessation of the employee's employment with the Central Intelligence Agency unless the Director determines that such representation or advice would be in the best interests of the United States.

''(c) DISCIPLINARY ACTIONS.—The regulations shall specify appropriate disciplinary actions (including loss of retirement benefits) to be taken against any employee determined by the Director of Central Intelligence to have violated the agreement of the employee under this section.''

[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.]

EXECUTIVE ORDER NO. 13355

Ex. Ord. No. 13355, Aug. 27, 2004, 69 F.R. 53593, which related to strengthened management of the Intelligence Community, was revoked by Ex. Ord. No. 12333, § 3.6, Dec. 4, 1981, 46 F.R. 59954, as amended by Ex. Ord. No. 13470, § 4(j), July 30, 2008, 73 F.R. 45341, set out as a note under section 401 of this title.

§ 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.

(Pub. L. 108–458, title I, § 1011(c), Dec. 17, 2004, 118 Stat. 3661.)

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

Pub. L. 108–458, title I, § 1011(b), Dec. 17, 2004, 118 Stat. 3661, provided that: ''It is the sense of Congress that—

''(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.''

§ 403–5. 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 are adequate to satisfy the overall intelligence needs of the Department of Defense, including the needs of the chairman[1] 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;

[1] So in original. Probably should be capitalized.

(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 conduct of signals intelligence activities and shall ensure that the product is disseminated in a timely manner to authorized recipients;

(2) through the National Geospatial-Intelligence Agency (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense—

(A) for carrying out tasking of imagery collection;

(B) for the coordination of imagery processing and exploitation activities;

(C) for ensuring the dissemination of imagery in a timely manner to authorized recipients; and

(D) notwithstanding any other provision of law, for—

(i) prescribing technical architecture and standards related to imagery intelligence and geospatial information and ensuring compliance with such architecture and standards; and

(ii) 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 system within the Department of Defense 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), 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.

(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.

(July 26, 1947, ch. 343, title I, §105, as added Pub. L. 102–496, title VII, §706(a), Oct. 24, 1992, 106 Stat. 3194; amended Pub. L. 103–359, title V, §501(a)(2), Oct. 14, 1994, 108 Stat. 3428; Pub. L. 104–201, div. A, title XI, §1114(a), Sept. 23, 1996, 110 Stat. 2684; Pub. L. 104–293, title VIII, §808, Oct. 11, 1996, 110 Stat. 3481; Pub. L. 107–306, title VIII, §811(b)(1)(A), Nov. 27, 2002, 116 Stat. 2421; Pub. L. 108–136, div. A, title IX, §921(e)(2), Nov. 24, 2003, 117 Stat. 1569; Pub. L. 108–177, title III, §361(a), Dec. 13, 2003, 117 Stat. 2625; Pub. L. 108–458, title I, §§1071(a)(1)(E), (F), (2)(A), 1072(a)(2), (3), 1074(b)(1)(B), Dec. 17, 2004, 118 Stat. 3689, 3690, 3692, 3694.)

AMENDMENTS

2004—Pub. L. 108–458, §1074(b)(1)(B)(ii), struck out ''Foreign'' before ''Intelligence'' in section catchline.

Subsec. (a). Pub. L. 108–458, §1072(a)(2), substituted ''Consistent with sections 403 and 403–1 of this title, the Secretary'' for ''The Secretary'' in introductory provisions.

Pub. L. 108–458, §1071(a)(1)(E), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in introductory provisions.

Subsec. (a)(2). Pub. L. 108–458, §1074(b)(1)(B)(i), substituted ''National Intelligence Program'' for ''National Foreign Intelligence Program''.

Pub. L. 108–458, §1071(a)(2)(A), struck out ''of Central Intelligence'' after ''Director''.

Subsec. (a)(3). Pub. L. 108–458, §1074(b)(1)(B)(i), substituted ''National Intelligence Program'' for ''National Foreign Intelligence Program''.

Subsec. (b). Pub. L. 108–458, §1072(a)(3), substituted ''403 and 403–1'' for ''403–3 and 403–4'' in introductory provisions.

Subsec. (b)(6)(A). Pub. L. 108–458, §1071(a)(1)(F), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2003—Subsec. (b)(2). Pub. L. 108–136, §921(e)(2), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Subsec. (d). Pub. L. 108–177 struck out subsec. (d) which related to annual evaluations of performance and responsiveness of certain elements of the intelligence community.

Subsec. (d)(3). Pub. L. 108–136, § 921(e)(2), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2002—Subsec. (d). Pub. L. 107–306 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''The Director of Central Intelligence, in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, shall submit each year to the Committee on Foreign Intelligence of the National Security Council and the appropriate congressional committees (as defined in section 404d(c) of this title) an evaluation of the performance and the responsiveness of the National Security Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency in meeting their national missions.''

1996—Subsec. (a). Pub. L. 104–293, § 808(1), inserted '', in consultation with the Director of Central Intelligence,'' after ''Secretary of Defense'' in introductory provisions.

Subsec. (b)(2). Pub. L. 104–201 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''through the Central Imagery Office (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense for carrying out tasking of imagery collection, for the coordination of imagery processing and exploitation activities, and for ensuring the dissemination of imagery in a timely manner to authorized recipients;''.

Subsec. (d). Pub. L. 104–293, § 808(2), added subsec. (d).

1994—Subsec. (b)(2). Pub. L. 103–359 substituted ''the Central Imagery Office'' for ''a central imagery authority''.

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; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by 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.

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 193 of Title 10, Armed Forces.

DEPARTMENT OF DEFENSE STRATEGY FOR OPEN-SOURCE INTELLIGENCE

Pub. L. 109–163, div. A, title IX, § 931, Jan. 6, 2006, 119 Stat. 3411, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Open-source intelligence (OSINT) is intelligence that is produced from publicly available information and is collected, exploited, and disseminated in a timely manner to an appropriate audience for the purpose of addressing a specific intelligence requirement.

''(2) With the Information Revolution, the amount, significance, and accessibility of open-source information has expanded significantly, but the intelligence community has not expanded its exploitation efforts and systems to produce open-source intelligence.

''(3) The production of open-source intelligence is a valuable intelligence discipline that must be integrated into intelligence tasking, collection, processing, exploitation, and dissemination to ensure that United States policymakers are fully and completely informed.

''(4) The dissemination and use of validated open-source intelligence inherently enables information sharing since open-source intelligence is produced without the use of sensitive sources and methods. Open-source intelligence products can be shared with the American public and foreign allies because of the unclassified nature of open-source intelligence.

''(5) The National Commission on Terrorist Attacks Upon the United States (popularly referred to as the '9/11 Commission'), in its final report released on July 22, 2004, identified shortfalls in the ability of the United States to use all-source intelligence, a large component of which is open-source intelligence.

''(6) In the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) [see Tables for classification], Congress calls for coordination of the collection, analysis, production, and dissemination of open-source intelligence.

''(7) The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, in its report to the President released on March 31, 2005, found that 'the need for exploiting open-source material is greater now than ever before,' but that 'the Intelligence Community's open source programs have not expanded commensurate with either the increase in available information or with the growing importance of open source data to today's problems'.

''(b) DEPARTMENT OF DEFENSE STRATEGY FOR OPEN-SOURCE INTELLIGENCE.—

''(1) DEVELOPMENT OF STRATEGY.—The Secretary of Defense shall develop a strategy for the purpose of integrating open-source intelligence into the Defense intelligence process. The strategy shall be known as the 'Defense Strategy for Open-Source Intelligence'. 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. 6, 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 1081(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.

(July 26, 1947, ch. 343, title I, § 105A, as added Pub. L. 104–293, title VIII, § 814(a), Oct. 11, 1996, 110 Stat. 3483; amended Pub. L. 108–136, div. A, title IX, § 921(e)(3), Nov. 24, 2003, 117 Stat. 1569.)

AMENDMENTS

2003—Subsec. (b)(1)(C). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

§ 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 foreign intelligence 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.

(July 26, 1947, ch. 343, title I, § 105B, as added Pub. L. 107–56, title IX, § 905(a)(2), Oct. 26, 2001, 115 Stat. 388; amended Pub. L. 108–458, title I, § 1071(a)(1)(G), (H), (2)(B), (C), Dec. 17, 2004, 118 Stat. 3689, 3690.)

PRIOR PROVISIONS

A prior section 403–5b, act July 26, 1947, ch. 343, title I, § 105B, as added Pub. L. 106–120, title V, § 501(a)(1), Dec. 3, 1999, 113 Stat. 1616, which related to protection of operational files of the National Imagery and Mapping Agency, was renumbered by subsequent acts and transferred, see section 432 of this title.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458, § 1071(a)(1)(G), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (a)(2). Pub. L. 108–458, § 1071(a)(2)(B), struck out ''of Central Intelligence'' after ''Director''.

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.

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; Transition Provisions note under section 401 of this title.

§ 403–5c. Transferred

CODIFICATION

Section, act July 26, 1947, ch. 343, title I, § 105C, formerly § 105B, as added Pub. L. 106–120, title V, § 501(a)(1), Dec. 3, 1999, 113 Stat. 1616; renumbered § 105C, Pub. L. 107–56, title IX, § 905(a)(1), Oct. 26, 2001, 115 Stat. 388; amended Pub. L. 107–306, title III, § 353(b)(5), Nov. 27, 2002, 116 Stat. 2402; Pub. L. 108–136, div. A, title IX, § 921(e)(4), Nov. 24, 2003, 117 Stat. 1569, which related to protection of operational files of the National Geospatial-Intelligence Agency, was renumbered section 702 of act July 26, 1947, by Pub. L. 108–136, div. A, title IX, § 922(c), Nov. 24, 2003, 117 Stat. 1573, and was transferred to section 432 of this title.

§ 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 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; or

(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.

(Pub. L. 107–56, title II, § 203(d), Oct. 26, 2001, 115 Stat. 281; Pub. L. 107–296, title VIII, § 897(a), Nov. 25, 2002, 116 Stat. 2257.)

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.''

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. 107–296 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.

§ 403–5e. Transferred

CODIFICATION

Section, act July 26, 1947, ch. 343, title I, § 105D, as added Pub. L. 107–306, title V, § 502(a), Nov. 27, 2002, 116 Stat. 2405, which related to protection of operational files of the National Reconnaissance Office, was renumbered section 703 of act July 26, 1947, by Pub. L. 108–136, div. A, title IX, § 922(c), Nov. 24, 2003, 117 Stat. 1573, and was transferred to section 432a of this title.

§ 403–6. Appointment of officials responsible for intelligence-related activities

(a) Recommendation of DNI in certain appointments

(1) In the event of a vacancy in a position referred to in paragraph (2), the Director of National Intelligence shall recommend to the President an individual for nomination to fill the vacancy.

(2) Paragraph (1) applies to the following positions:

(A) The Principal Deputy Director of National Intelligence.

(B) The Director of the Central Intelligence Agency.

(b) Concurrence of DNI in appointments to positions in the intelligence community

(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall obtain the concurrence of the Director of National Intelligence before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy. If the Director does not concur in the recommendation, the head of the department or agency concerned may not fill the vacancy or make the recommendation to the President (as the case may be). In the case in which the Director does not concur in such a recommendation, the Director and the head of the department or agency concerned may advise the President directly of the intention to withhold concurrence or to make a recommendation, as the case may be.

(2) Paragraph (1) applies to the following positions:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Geospatial-Intelligence Agency.

(D) The Assistant Secretary of State for Intelligence and Research.

(E) The Director of the Office of Intelligence of the Department of Energy.

(F) The Director of the Office of Counterintelligence of the Department of Energy.

(G) The Assistant Secretary for Intelligence and Analysis of the Department of the Treasury.

(H) The Executive Assistant Director for Intelligence of the Federal Bureau of Investigation or any successor to that position.

(I) The Under Secretary of Homeland Security for Intelligence and Analysis.

(c) Consultation with DNI in certain positions

(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall consult with the Director of National Intelligence before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy.

(2) Paragraph (1) applies to the following positions:

(A) The Director of the Defense Intelligence Agency.

(B) The Assistant Commandant of the Coast Guard for Intelligence.

(C) The Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of title 28.

(July 26, 1947, ch. 343, title I, § 106, as added Pub. L. 102–496, title VII, § 706(a), Oct. 24, 1992, 106

Stat. 3195; amended Pub. L. 103–359, title V, § 501(a)(3), Oct. 14, 1994, 108 Stat. 3428; Pub. L. 104–293, title VIII, § 815(a), Oct. 11, 1996, 110 Stat. 3484; Pub. L. 107–108, title III, § 308, Dec. 28, 2001, 115 Stat. 1399; Pub. L. 108–136, div. A, title IX, § 921(e)(5), Nov. 24, 2003, 117 Stat. 1569; Pub. L. 108–177, title I, § 105(c), Dec. 13, 2003, 117 Stat. 2603; Pub. L. 108–458, title I, § 1014, Dec. 17, 2004, 118 Stat. 3663; Pub. L. 109–177, title V, § 506(a)(4), Mar. 9, 2006, 120 Stat. 247; Pub. L. 110–53, title V, § 531(b)(5), Aug. 3, 2007, 121 Stat. 334.)

AMENDMENTS

2007—Subsec. (b)(2)(I). Pub. L. 110–53 amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''The Assistant Secretary of Homeland Security for Information Analysis.''

2006—Subsec. (c)(2)(C). Pub. L. 109–177 added subpar. (C).

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).

2003—Subsec. (a)(2)(C). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Subsec. (b)(2)(E). Pub. L. 108–177 added subpar. (E).

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.''.

1996—Pub. L. 104–293 amended section generally, substituting provisions relating to appointment of individuals responsible for intelligence-related activities for provisions relating to administrative provisions pertaining to defense elements within the intelligence community.

1994—Subsec. (b). Pub. L. 103–359 substituted ''Central Imagery Office'' for ''central imagery authority'' in heading and text.

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.

§ 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 House of Representatives and the 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.

(Pub. L. 104–293, title III, § 309, Oct. 11, 1996, 110 Stat. 3467.)

CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 1997, 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 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.

§ 403–8. 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.

(Pub. L. 106–120, title III, § 313, Dec. 3, 1999, 113 Stat. 1615.)

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.

§ 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.

(June 20, 1949, ch. 227, § 1, 63 Stat. 208; Pub. L. 86–707, title V, § 511(a)(3), (c)(1), Sept. 6, 1960, 74 Stat. 800, 801; Pub. L. 108–458, title I, § 1077, Dec. 17, 2004, 118 Stat. 3695.)

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;''.

1960—Subsec. (c). Pub. L. 86–707, § 511(c)(1), substituted ''Government.'' for ''Government; and''.

Subsec. (d). Pub. L. 86–707, § 511(a)(3), repealed subsec. (d) which defined ''continental United States''. See section 5921 of Title 5, Government Organization and Employees.

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; Transition Provisions note under section 401 of this title.

SHORT TITLE

Act June 20, 1949, ch. 227, § 10, formerly § 12, 63 Stat. 212; renumbered § 10, July 7, 1958, Pub. L. 85–507, § 21(b)(2), 72 Stat. 337, provided that: ''This Act [enacting section 403a et seq. of this title] may be cited as the 'Central Intelligence Agency Act of 1949'.''

SEPARABILITY

Act June 20, 1949, § 9, formerly § 11, 63 Stat. 212; renumbered § 9, July 7, 1958, Pub. L. 85–507, § 21(b)(2), 72 Stat. 337, provided that: ''If any provision of this Act [enacting sections 403a et seq. of this title], or the application of such provision to any person or circumstances, 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.''

§ 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.

(June 20, 1949, ch. 227, § 2, 63 Stat. 208; Pub. L. 108–458, title I, § 1071(b)(2)(A), Dec. 17, 2004, 118 Stat. 3690.)

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.

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; Transition Provisions 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[1] shall not be delegable. Each determination or decision required by para-

[1] See Codification note below.

graphs (12) and (15) of section 2304(a), by sections 2306 and 2313, or by section 2307(a) of title 10,[1] 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.

In subsecs. (a) and (d), references to the appropriate sections of title 10 were substituted for references to sections 2(c)(1) to (6), (10), (12), (15), (17), 3, 4, 5, 6, and 10 of the Armed Services Procurement Act of 1947 (Public Law 413, 80th Congress), on authority of section 49(b) of act Aug. 10, 1956, ch. 1041, 70A Stat. 640, section 1 of which enacted Title 10, Armed Forces. Prior to the enactment of Title 10, sections 2 to 6 and 10 of the Armed Services Procurement Act of 1947 were classified to sections 151 to 155 and 159 of Title 41, Public Contracts. Cited sections of the Act were restated in sections of Title 10 as follows:

Act	*Title 10*
2(c)	2304(a)
3	2305(a)–(c)
4	2306, 2313
5	2307
5(a)	2307(a)
6	2312
10	2308, 2309

Sections 2304 and 2305 of title 10 were amended generally by Pub. L. 98–369, and as so amended contain provisions differing from those referred to in subsecs. (a) and (d). Section 2308 of title 10 was repealed by Pub. L. 103–355, title I, § 1503(b)(1), Oct. 13, 1994, 108 Stat. 3297. For similar provisions, see section 2311 of title 10.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–106 struck out subsec. (e) which read as follows: ''Notwithstanding subsection (e) of section 759 of title 40, the provisions of section 759 of title 40 relating to the procurement of automatic data processing equipment or services shall not apply with respect to such procurement by the Central Intelligence Agency.''

1982—Subsec. (e). Pub. L. 97–269 added subsec. (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 703 of title VII of Pub. L. 97–269 provided that: ''The provisions of titles IV and V [enacting former section 202 of Title 10, Armed Forces, and amending this section] and of this title [which, except for enacting this note was not classified to the Code] shall become effective upon the date of the enactment of this Act [Sept. 27, 1982].''

PROCUREMENT OF AUTOMATIC DATA PROCESSING EQUIPMENT OR SERVICES; CONTRACTS MADE BEFORE SEPTEMBER 27, 1982

Section 502(b) of Pub. L. 97–269 provided that: ''Subsection (e) of section 3 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c(e)), as added by subsection (a) of this section, does not apply to a contract made before the date of the enactment of this Act [Sept. 27, 1982].''

§ 403d. Repealed. Pub. L. 85–507, § 21(b)(2), July 7, 1958, 72 Stat. 337

Section, act June 20, 1949, ch. 227, § 4, 63 Stat. 208, 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. 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;

(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;

(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;

(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 and 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 stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations, when not otherwise fixed by law;

(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 residence 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.[1]

(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 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.

(B) While in the United States (as described in paragraph (3)(A) of this subsection)[2] 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.

(C) Where an officer or employee on leave returns to the United States (as described in paragraph (3)(A) of this subsection),[2] leave of absence granted shall be exclusive of the time actually and necessarily occupied in going to and from the United States (as so described) and such time as may be necessarily occupied in awaiting transportation.

(4) Notwithstanding the provisions of any other law, transport for or on behalf of an officer or employee of the Agency, a privately owned motor vehicle in any case in which it shall be determined that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, and pay the costs of such transportation. Not more than one motor vehicle of any officer or employee of the Agency may be transported under authority of this paragraph during any four-year period, except that, as a replacement for such motor vehicle, one additional motor vehicle of any such officer or employee may be so transported during such period upon approval, in advance, by the Director and upon a determination, in advance, by the Director that such replacement is necessary for reasons beyond the control of the officer or employee and is 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 5731 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) In the event of illness or injury requiring hospitalization of an officer or full time employee of the Agency incurred in the line of duty while such person is assigned abroad, pay for the cost of the treatment of such illness or injury at a suitable hospital or clinic;

(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.

(6) 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

[1] So in original. The period probably should be a semicolon.

[2] See Codification note below.

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.

(7) Pay the costs of travel of new appointees and their dependents, and the transportation of their household goods and personal effects, from places of actual residence in foreign countries at time of appointment to places of employment and return to their actual residences at the time of appointment or a point 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.

(b) Allowances and benefits comparable to those paid members of Foreign Service; special requirements; persons detailed or assigned from other agencies; regulations

(1) The Director may pay to officers and employees of the Agency, and to persons detailed or assigned to the Agency from other agencies of the Government or from the Armed Forces, allowances and benefits comparable to the allowances and benefits authorized to be paid 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.

(2) The Director may pay allowances and benefits related to officially authorized travel, personnel and physical security activities, operational activities, and cover-related activities (whether or not such allowances and benefits are otherwise authorized under this section or any other provision of law) when payment of such allowances and benefits is necessary to meet the special requirements of work related to such activities. Payment of allowances and benefits under this paragraph shall be in accordance with regulations prescribed by the Director. Rates for allowances and benefits under this paragraph may not be set at rates in excess of those authorized by section 5724 and 5724a of title 5 when reimbursement is provided for relocation attributable, in whole or in part, to relocation within the United States.

(3) Notwithstanding any other provision of this section or any other provision of law relating to the officially authorized travel of Government employees, the Director, in order to reflect Agency requirements not taken into account in the formulation of Government-wide travel procedures, may by regulation—

(A) authorize the travel of officers and employees of the Agency, and of persons detailed or assigned to the Agency from other agencies of the Government or from the Armed Forces who are engaged in the performance of intelligence functions, and

(B) provide for payment for such travel, in classes of cases, as determined by the Director, in which such travel is important to the performance of intelligence functions.

(4) Members of the Armed Forces may not receive benefits under both this section and title 37 for the same purpose. The Director and Secretary of Defense shall prescribe joint regulations to carry out the preceding sentence.

(5) Regulations, other than regulations under paragraph (1), issued pursuant to this subsection 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.

(June 20, 1949, ch. 227, § 4, formerly § 5, 63 Stat. 209; renumbered § 4, Pub. L. 85–507, § 21(b)(2), July 7, 1958, 72 Stat. 337; amended Pub. L. 86–707, title III, §§ 301(b), 323, title V, § 511(a)(3), (c)(2)–(5), Sept. 6, 1960, 74 Stat. 795, 798, 800, 801; Pub. L. 97–89, title V, § 501, Dec. 4, 1981, 95 Stat. 1152; Pub. L. 103–359, title IV, § 401, Oct. 14, 1994, 108 Stat. 3427; Pub. L. 108–177, title IV, § 401, Dec. 13, 2003, 117 Stat. 2631.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (b)(1), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 9 of title I of the Foreign Service Act of 1980 is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

CODIFICATION

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. 103–359, § 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 5731 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. 103–359, § 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. 103–359, § 401(2), substituted ''the opinion of the Director'' for ''his opinion'' in two places.

Subsec. (a)(5)(C). Pub. L. 103–359, § 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, §511(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 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 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 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 Officers 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 ''United States (as described in paragraph (3)(A) of this section) 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'' for ''continental United States on leave, the service of any officer or employee shall not be available for work or duties except in the agency or for training or for reorientation for work''.

Par. (3)(C). Pub. L. 86–707, §511(c)(5), substituted ''returns to the United States (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, §323(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 1131(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 1136 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 vehicle 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 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 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.

(Pub. L. 98–215, title IV, § 402, Dec. 9, 1983, 97 Stat. 1477; Pub. L. 99–569, title V, § 503, Oct. 27, 1986, 100 Stat. 3198.)

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 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

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 paragraphs (2) and (3) of section 403(a) of this title,[1] subsections (c)(7) and (d) of section 403–3 of this title,[1] subsections (a) and (g) of section 403–4 of this title,[1] and section 405 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, and 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;

(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;

[1] See References in Text notes below.

(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 termination 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.

(June 20, 1949, ch. 227, §5, formerly §6, 63 Stat. 211; June 26, 1951, ch. 151, 65 Stat. 89; renumbered §5, Pub. L. 85–507, §21(b)(2), July 7, 1958, 72 Stat. 337; amended Pub. L. 88–448, title IV, §402(a)(28), Aug. 19, 1964, 78 Stat. 494; Pub. L. 97–89, title V, §502, Dec. 4, 1981, 95 Stat. 1153; Pub. L. 98–215, title IV, §401, Dec. 9, 1983, 97 Stat. 1477; Pub. L. 103–178, title V, §501(1), Dec. 3, 1993, 107 Stat. 2038; Pub. L. 105–107, title IV, §401(a), Nov. 20, 1997, 111 Stat. 2257; Pub. L. 105–272, title IV, §§401, 403(a)(1), Oct. 20, 1998, 112 Stat. 2403, 2404; Pub. L. 106–567, title IV, §405(a), (b), Dec. 27, 2000, 114 Stat. 2849; Pub. L. 107–306, title VIII, §841(c), Nov. 27, 2002, 116 Stat. 2431; Pub. L. 108–177, title III, §377(b)(1), Dec. 13, 2003, 117 Stat. 2630.)

REFERENCES IN TEXT

Sections 403, 403–3 and 403–4 of this title, referred to in subsec. (a)(1), were repealed and new sections 403, 403–3 and 403–4 enacted by Pub. L. 108–458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3643, without corresponding amendment to this section. The new sections differ from the sections they replaced in both content and structure.

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. 97–258, §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

2003—Subsec. (a)(1). Pub. L. 108–177 substituted ''(c)(7)'' for ''(c)(6)''.

2002—Subsec. (c)(2). Pub. L. 107–306 substituted ''a report on the transfer of sums described in paragraph (1) each time that authority is exercised.'' for ''an annual report on the transfers of sums described in paragraph (1).''

2000—Pub. L. 106–567 added subsec. (a) and (b) headings and subsec. (c).

1998—Subsec. (a)(1). Pub. L. 105–272, §403(a)(1), substituted ''paragraphs (2) and (3) of section 403(a)'' for ''subparagraphs (B) and (C) of section 403(a)(2)'' and ''(c)(6)'' for ''(c)(5)'' and made technical amendments to references in original act which appear in text as references to sections 403, 403–3, 403–4 of this title.

Subsec. (a)(4). Pub. L. 105–272, §401, substituted ''and 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. 103–178 substituted ''Office of Management and Budget'' for ''Bureau of the Budget'' and ''subparagraphs (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''.

1983—Subsec. (f). Pub. L. 98–215 added subsec. (f).

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.

1951—Subsec. (f). Act June 26, 1951, added subsec. (f).

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. 403f(c)], as added by subsection (a) of this section, shall apply with respect to amounts appropriated or 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:

Pub. L. 110–329, div. C, title VIII, § 8047(b), Sept. 30, 2008, 122 Stat. 3632.

Pub. L. 110–116, div. A, title VIII, § 8048(b), Nov. 13, 2007, 121 Stat. 1325.

Pub. L. 109–289, div. A, title VIII, § 8045(b), Sept. 29, 2006, 120 Stat. 1283.

Pub. L. 109–148, div. A, title VIII, § 8052(b), Dec. 30, 2005, 119 Stat. 2710.

Pub. L. 108–287, title VIII, § 8057(b), Aug. 5, 2004, 118 Stat. 983.

Pub. L. 108–87, title VIII, § 8057(b), Sept. 30, 2003, 117 Stat. 1085.

Pub. L. 107–248, title VIII, § 8058(b), Oct. 23, 2002, 116 Stat. 1550.

Pub. L. 107–117, div. A, title VIII, § 8063(b), Jan. 10, 2002, 115 Stat. 2261.

Pub. L. 106–259, title VIII, § 8062(b), Aug. 9, 2000, 114 Stat. 688.

Pub. L. 106–79, title VIII, § 8065(b), Oct. 25, 1999, 113 Stat. 1244.

Pub. L. 105–262, title VIII, § 8065(b), Oct. 17, 1998, 112 Stat. 2312.

Pub. L. 105–56, title VIII, § 8071(b), Oct. 8, 1997, 111 Stat. 1235.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8080(b)], Sept. 30, 1996, 110 Stat. 3009–71, 3009–104.

Pub. L. 104–61, title VIII, § 8096(b), Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103–335, title VIII, § 8154(b), Sept. 30, 1994, 108 Stat. 2658.

§ 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. 947(b)).

(June 20, 1949, ch. 227, § 6, formerly § 7, 63 Stat. 211; renumbered § 6, Pub. L. 85–507, § 21(b)(2), July 7, 1958, 72 Stat. 337; amended Pub. L. 103–178, title V, § 501(2), Dec. 3, 1993, 107 Stat. 2038; Pub. L. 105–272, title IV, § 403(a)(2), Oct. 20, 1998, 112 Stat. 2404; Pub. L. 108–177, title III, § 377(b)(2), Dec. 13, 2003, 117 Stat. 2630; Pub. L. 108–458, title I, §§ 1071(b)(1)(A), 1072(b), Dec. 17, 2004, 118 Stat. 3690, 3692.)

References in Text

Act of August 28, 1935, referred to in text, which provided for the yearly publication of the Official Register of the United States, was repealed by Pub. L. 86–626, title I, § 101, July 12, 1960, 74 Stat. 427.

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(85), 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

2004—Pub. L. 108–458, § 1072(b), substituted ''section 403–1(i)'' for ''section 403–3(c)(7)''.

Pub. L. 108–458, § 1071(b)(1)(A), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2003—Pub. L. 108–177 substituted ''section 403–3(c)(7) of this title'' for ''section 403–3(c)(6) of this title''.

1998—Pub. L. 105–272 substituted ''403–3(c)(6)'' for ''403–3(c)(5)''.

1993—Pub. L. 103–178 substituted ''section 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. 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; Transition 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 is in the interest of national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be admitted to 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.

(June 20, 1949, ch. 227, § 7, formerly § 8, 63 Stat. 212; renumbered § 7, Pub. L. 85–507, § 21(b)(2), July 7, 1958, 72 Stat. 337; Pub. L. 104–208, div. C, title III, § 308(f)(6), Sept. 30, 1996, 110 Stat. 3009–622.)

References in Text

The immigration laws, referred to in text, are classified generally to Title 8, Aliens and Nationality. See also section 1101(a)(17) of Title 8.

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 admitted to'' for ''families entering''.

CHANGE OF NAME

Ex. Ord. No. 6166, §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 1950, §§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.

§ 403i. Repealed. Sept. 1, 1954, ch. 1208, title VI, § 601(b), 68 Stat. 1115

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 14[1] 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;[1] repair, rental, operation, and maintenance of buildings, utilities, facilities, and appurtenances; 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.

(June 20, 1949, ch. 227, §8, formerly §10, 63 Stat. 212; renumbered §8, Pub. L. 85–507, §21(b)(2), July 7, 1958, 72 Stat. 337.)

REFERENCES IN TEXT

Section 14 of title 6, referred to in subsec. (a)(1), was repealed by Pub. L. 93–310, title II, §203(1), June 6, 1972, 86 Stat. 202.

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 the Revised Statutes was subsequently repealed by Pub. L. 86–249, §17(12), Sept. 9, 1959, 73 Stat. 485.

CODIFICATION

In subsec. (a)(1), ''(5 U.S.C. 7901)'' substituted for ''(5 U.S.C. 150)'' 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.

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.

[1] See References in Text note below.

AVAILABILITY OF APPROPRIATIONS FOR CONSTRUCTION PROJECTS

Pub. L. 103–139, 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:

Pub. L. 102–396, title IX, § 9030, Oct. 6, 1992, 106 Stat. 1907.

Pub. L. 102–172, title VIII, § 8030, Nov. 26, 1991, 105 Stat. 1177.

Pub. L. 101–511, title VIII, § 8031, Nov. 5, 1990, 104 Stat. 1881.

Pub. L. 101–165, title IX, § 9042, Nov. 21, 1989, 103 Stat. 1137.

Pub. L. 100–463, title VIII, § 8074, Oct. 1, 1988, 102 Stat. 2270–29.

Pub. L. 100–202, § 101(b) [title VIII, § 8095], Dec. 22, 1987, 101 Stat. 1329–43, 1329–79.

Pub. L. 99–500, § 101(c) [title IX, § 9130], Oct. 18, 1986, 100 Stat. 1783–82, 1783–128; Pub. L. 99–591, § 101(c) [title IX, § 9130], Oct. 30, 1986, 100 Stat. 3341–82, 3341–128.

ACQUISITION OF CRITICAL SKILLS

Pub. L. 99–569, title V, § 506, Oct. 27, 1986, 100 Stat. 3202, provided that: ''Pursuant to the authority granted in section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), the Director of Central Intelligence shall establish an undergraduate 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 1959 (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 1081(a), (b) of Pub. L. 108–458, 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.

(June 20, 1949, ch. 227, § 11, as added Pub. L. 96–450, title IV, § 403(a), Oct. 14, 1980, 94 Stat. 1978.)

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 2205(10) 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.

§ 403*l*. 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 any such gift) 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.

(June 20, 1949, ch. 227, § 12, as added Pub. L. 96–450, title IV, § 404, Oct. 14, 1980, 94 Stat. 1979.)

CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the Na-

tional 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.

(June 20, 1949, ch. 227, § 13, as added Pub. L. 97–89, title V, § 503, Dec. 4, 1981, 95 Stat. 1153.)

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.

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 806 of Pub. L. 97–89, set out as a note under section 1621 of Title 10, Armed Forces.

§ 403n. Special provisions for spouses of Central Intelligence Agency employees applicable to Agency participants in Civil Service Retirement and Disability System

(a) Manner and extent of applicability

The provisions of sections 2002, 2031(b)(1)–(3), 2031(f), 2031(g), 2031(h)(2), 2031(i), 2031(*l*), 2032, 2033, 2034, 2035, 2052(b), 2071(b), 2071(d), and 2094(b) of this title establishing certain requirements, limitations, rights, entitlements, and benefits relating to retirement annuities, survivor benefits, and lump-sum payments for a spouse or former spouse of an Agency employee who is a participant in the Central Intelligence Agency Retirement and Disability System shall apply in the same manner and to the same extent in the case of an Agency employee who is a participant in the Civil Service Retirement and Disability System.

(b) Regulations

The Director of the Office of Personnel Management, in consultation with the Director of the Central Intelligence Agency, shall prescribe such regulations as may be necessary to implement the provisions of this section.

(June 20, 1949, ch. 227, § 14, as added Pub. L. 97–269, title VI, § 612, Sept. 27, 1982, 96 Stat. 1154; amended Pub. L. 99–569, title III, § 302(b), Oct. 27, 1986, 100 Stat. 3194; Pub. L. 100–178, title IV, §§ 401(b), 402(b)(3), Dec. 2, 1987, 101 Stat. 1013, 1014; Pub. L. 102–496, title VIII, § 803(a)(1), Oct. 24, 1992, 106 Stat. 3251; Pub. L. 108–458, title I, § 1071(b)(3)(A), Dec. 17, 2004, 118 Stat. 3690.)

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 ''232(b),'' before ''234(c), 234(d),''.

Pub. L. 100–178, § 401(b), inserted ''225,'' after ''223, 224,''.

1986—Subsec. (a). Pub. L. 99–569 inserted ''224,'' after ''223,''.

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; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as an Effective Date note under section 2001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–178 effective Nov. 15, 1982, but not to be construed to require forfeiture by any individual of benefits received before Dec. 2, 1987, nor to require reduction in level of benefits received by any individual who was receiving benefits under section 232 of Pub. L. 88–643 before Dec. 2, 1987, see section 402(c)–(e) of Pub. L. 100–178, set out as an Effective Date of Amendments to Pub. L. 88–643 Prior to Enactment of Pub. L. 102–496 note under section 2001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 302(d) of Pub. L. 99–569 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 on October 1, 1986.''

EFFECTIVE DATE

Section effective Nov. 15, 1982, see section 613 of Pub. L. 97–269 set out as an Effective Date of Amendments to Pub. L. 88–643 Prior to Enactment of Pub. L. 102–496 note under section 2001 of this title.

§ 403*o*. 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 403f(a)(4) of this title to carry firearms for the protection of current or former Agency personnel and their immediate families, defectors 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.

(June 20, 1949, ch. 227, § 15, as added Pub. L. 98–473, title I, § 140, Oct. 12, 1984, 98 Stat. 1973, as added Pub. L. 98–618, title IV, § 401, Nov. 8, 1984, 98 Stat. 3301; amended Pub. L. 105–107, title IV, § 404, Nov. 20, 1997, 111 Stat. 2260; Pub. L. 107–306, title VIII, § 841(d), Nov. 27, 2002, 116 Stat. 2432; Pub. L. 108–177, title III, § 377(b)(3), title IV, § 402, Dec. 13, 2003, 117 Stat. 2630, 2631.)

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.

Provisions of this section were also enacted by the Intelligence Authorization Act for fiscal year 1985, Pub. L. 98–618, title IV, § 401, Nov. 8, 1984, 98 Stat. 3301.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–177, § 377(b)(3)(A), substituted ''officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40,'' for ''special policemen of the General Services Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policeman for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes' (40 U.S.C. 318),''.

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. 318c)''.

Subsec. (d). Pub. L. 108–177, § 402, added subsec. (d).

2002—Subsec. (a)(5). Pub. L. 107–306 struck out par. (5) which read as follows: ''Not later than December 1, 1998, and annually thereafter, the Director shall submit a report to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate 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 Central Intelligence Agency.''

1997—Subsec. (a)(1). Pub. L. 105–107, § 404(1), (2), inserted ''(1)'' after ''(a)'', substituted ''powers—'' for

''powers only within Agency installations, and the rules and regulations enforced by such personnel shall be rules and regulations promulgated by the Director.'', and added subpars. (A) to (D).

Subsec. (a)(2) to (5). Pub. L. 105–107, § 404(3), added pars. (2) to (5).

DESIGNATION OF HEADQUARTERS COMPOUND OF CENTRAL INTELLIGENCE AGENCY AS THE GEORGE BUSH CENTER FOR INTELLIGENCE

Reference to the headquarters compound of the Central Intelligence Agency deemed to be a reference to the George Bush Center for Intelligence, see section 309 of Pub. L. 105–272, set out as a note under section 403–4 of this title.

§ 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—

(1) formerly married to an employee or former employee of the Agency, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(2) 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

(3) 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 regulation prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employees 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 subsection (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 ben-

efits 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—

(i) 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

(ii) 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.

(June 20, 1949, ch. 227, § 16, as added Pub. L. 99–569, title III, § 303(a), Oct. 27, 1986, 100 Stat. 3194; amended Pub. L. 102–88, title III, § 307(c), Aug. 14, 1991, 105 Stat. 433; Pub. L. 103–178, title II, § 203(c), Dec. 3, 1993, 107 Stat. 2031; Pub. L. 108–458, title I, § 1071(b)(2)(B), (b)(3)(B), (C), Dec. 17, 2004, 118 Stat. 3690, 3691.)

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)(2). Pub. L. 108–458, § 1071(b)(3)(B), substituted ''Director of the Central Intelligence Agency'' for ''Director of Central Intelligence'' in introductory provisions.

Subsec. (b)(3). Pub. L. 108–458, § 1071(b)(3)(C), substituted ''Director of the Central Intelligence Agency'' for ''Director of Central Intelligence'' in two places.

Subsec. (c)(1)(B). Pub. L. 108–458, § 1071(b)(2)(B), struck out ''of Central Intelligence'' after ''Director''.

1993—Subsec. (a). Pub. L. 103–178, § 203(c)(2)(A), substituted ''subsection (e)'' for ''subsection (c)(1)'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 103–178, § 203(c)(1), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 103–178, § 203(c)(2)(B), inserted ''or to subsection (d) of this section'' after ''subsection (b)(1) of this section'' in par. (2).

Pub. L. 103–178, § 203(c)(1)(A), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

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.

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; Transition Provisions 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 subsec. (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 2032 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 necessity for and the progress of corrective actions; and

(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 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.

(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 immediately communicate in writing to the intelligence committees the reasons for any such 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, 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 ad-

ministration 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 advise[1] 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) Executive Director;

(II) Deputy Director for Operations;

(III) Deputy Director for Intelligence;

(IV) Deputy Director for Administration; or

(V) Deputy Director for 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, 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), or does 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 intelligence committees directly.

(ii) The employee may contact the intelligence committees directly as described in clause (i) only if the employee—

(I) before making such a contact, furnishes to 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

(II) obtains and follows from the Director, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

(iii) A member or employee of one of the intelligence committees who receives a complaint or information under clause (i) does so in that member or employee's official capacity as a member or employee of that 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:

(i) 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 operations of an intelligence activity 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 (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

[1] So in original. Probably should be ''advice''.

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 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[2] 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 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.

(C) The Inspector General may not issue a subpoena for or on behalf of any other element or component of the Agency.

(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 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.

(7) 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) Subject to the concurrence of the Director, 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.

(f) Separate budget account

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.

(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.

(June 20, 1949, ch. 227, §17, as added Pub. L. 100–453, title V, §504, Sept. 29, 1988, 102 Stat. 1910; amended Pub. L. 101–193, title VIII, §801, Nov. 30, 1989, 103 Stat. 1711; Pub. L. 102–496, title VI, §601, Oct. 24, 1992, 106 Stat. 3187; Pub. L. 103–359, title

[2] So in original. Probably should be followed by a comma.

IV, § 402, Oct. 14, 1994, 108 Stat. 3427; Pub. L. 104–93, title IV, § 403, Jan. 6, 1996, 109 Stat. 969; Pub. L. 105–107, title IV, § 402, Nov. 20, 1997, 111 Stat. 2257; Pub. L. 105–272, title VII, § 702(a), Oct. 20, 1998, 112 Stat. 2414; Pub. L. 106–567, title IV, §§ 402, 403, Dec. 27, 2000, 114 Stat. 2847, 2848; Pub. L. 107–108, title III, § 309(a), Dec. 28, 2001, 115 Stat. 1399; Pub. L. 107–306, title VIII, § 811(b)(2), Nov. 27, 2002, 116 Stat. 2422; Pub. L. 108–458, title I, §§ 1071(b)(1)(B), (2)(C), 1074(b)(2), Dec. 17, 2004, 118 Stat. 3690, 3694.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (d)(4), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§ 413 et seq.) of this chapter. 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 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. (d)(1). Pub. L. 108–458, § 1071(b)(2)(C), struck out ''of Central Intelligence'' after ''to the Director'' in introductory provisions.

Subsec. (f). Pub. L. 108–458, §§ 1071(b)(1)(B), 1074(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, inspection, 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 Committee 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.''

Subsec. (e)(8). Pub. L. 106–567, § 402(b), substituted ''Government'' for ''Federal'' wherever appearing.

1998—Subsec. (d). Pub. L. 105–272 inserted ''; reports to Congress on urgent concerns'' after ''functional problems'' in heading and added par. (5).

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. (5) 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 535 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(1), substituted ''analysis, public administration, or auditing'' for ''analysis, or public administration''.

Subsec. (c)(1). Pub. L. 103–359, § 402(2), 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 ''June 30 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. (d)(3)(C). Pub. L. 103–359, § 402(4), substituted ''investigation, inspection, or audit,'' for ''investigation,''.

Subsec. (d)(4). Pub. L. 103–359, § 402(5), inserted ''or findings and recommendations'' after ''report''.

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''.

1992—Subsec. (e)(3). Pub. L. 102–496, in introductory provisions, substituted ''any person'' for ''an employee of the Agency'' and inserted ''from an employee of the Agency'' after ''received''.

1989—Pub. L. 101–193 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.

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; Transition Provisions 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 4th item on page 156, relating to the transmittal of semiannual reports to the intelligence committees, identifies a reporting provision which, as subsequently amended, is contained in subsec. (d)(1) 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.

§ 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 subsection (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 specified in section 8339(a)(3) of title 5 that is normally applicable only to so much of an employee's total service as exceeds ten years.

(2) The portion of the annuity relating to service 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 provided in section 8339(a)(3) of title 5; but, in addition, 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 percent 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 described in subsection (a) of this section shall be computed as provided in the provisions of section 8339(a) of title 5 that would otherwise be applicable 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 annuity computed under subsections (a) and (*o*)[1] of section 8339 of title 5.

(d) Officers and employees entitled to greater annuities 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 otherwise be entitled to a greater annuity computed under an otherwise applicable subsection of section 8339 of title 5.

(June 20, 1949, ch. 227, § 18, as added Pub. L. 101–193, title III, § 305, Nov. 30, 1989, 103 Stat. 1704; amended Pub. L. 102–496, title VIII, § 803(a)(2), Oct. 24, 1992, 106 Stat. 3252.)

REFERENCES IN TEXT

Subsection (*o*) of section 8339 of title 5, referred to in subsec. (c), was redesignated subsec. (p) of that section by Pub. L. 102–378, § 2(62), Oct. 2, 1992, 106 Stat. 1354.

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

1992—Subsec. (a). Pub. L. 102–496 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 which was formerly set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as an Effective Date note under section 2001 of this title.

§ 403r–1. Portability of overseas service retirement 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.

(Pub. L. 101–193, title III, § 306, Nov. 30, 1989, 103 Stat. 1704; Pub. L. 103–178, title II, § 204(a), Dec. 3, 1993, 107 Stat. 2033.)

CODIFICATION

Section was enacted as part of the Intelligence Authorization Act, Fiscal Year 1990, and not as part of the 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

1993—Pub. L. 103–178 substituted reference to section 2153 of this title for reference in original to section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

§ 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

[1] See References in Text note below.

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, 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.

(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.

(June 20, 1949, ch. 227, § 19, as added Pub. L. 101–193, title III, § 307(a), Nov. 30, 1989, 103 Stat. 1705; amended Pub. L. 102–496, title VIII, § 803(a)(3), Oct. 24, 1992, 106 Stat. 3252; Pub. L. 103–178, title V, § 501(3), Dec. 3, 1993, 107 Stat. 2038.)

[1] So in original. The comma probably should not appear.

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

1993—Subsec. (b). Pub. L. 103–178, § 501(3)(A), (C), substituted ''section 2052'' for ''section 2051'' in heading and closing provisions.

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.

1992—Subsec. (a). Pub. L. 102–496, § 803(a)(3)(A), 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). 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, 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 232''.

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 or children as defined in section 204 and section 232 of such the Central Intelligence Agency Retirement Act of 1964 for Certain Employees'', was executed by making the substitution for ''widow or widower, former spouse, and/or a 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 202 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees'', and struck out par. (2) which read as follows: ''The annuities and/or other benefits provided under subsections (c) and (d) of this section shall be deemed to be annuities and/or benefits under chapter 84 of title 5 for purposes of the other provisions of such chapter and other laws (including title 26) relating to such annuities and/or benefits, but shall be payable from the Central Intelligence Agency Retirement and Disability Fund established by section 202 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.''

Pub. L. 102–496, § 803(a)(3)(C), (D), redesignated subsec. (e) as (c) and struck out former subsec. (c) which provided for retirement of officers and employees of the Central Intelligence Agency as though designated pursuant to section 302(a) of Pub. L. 88–643 which was formerly set out as a note under section 403 of this title.

Subsec. (d). Pub. L. 102–496, § 803(a)(3)(C), struck out subsec. (d) which provided that survivors of officers and employees of the Central Intelligence Agency were to receive benefits as though deceased had been designated pursuant to section 302(a) of Pub. L. 88–643, which was formerly set out as a note under section 403 of this title.

Subsec. (e). Pub. L. 102–496, § 803(a)(3)(D), redesignated subsec. (e) as (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as an Effective Date note under section 2001 of this title.

§ 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.

(June 20, 1949, ch. 227, § 20, as added Pub. L. 104–293, title VIII, § 813(a), Oct. 11, 1996, 110 Stat. 3483; amended Pub. L. 108–458, title I, § 1071(b)(2)(D), Dec. 17, 2004, 118 Stat. 3690.)

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. (c). 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.

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; Transition Provisions note under section 401 of this title.

APPLICABILITY OF APPOINTMENT REQUIREMENTS

Section 813(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.

(June 20, 1949, ch. 227, § 21, as added Pub. L. 105–107, title IV, § 403(a), Nov. 20, 1997, 111 Stat. 2258; amended Pub. L. 106–120, title IV, § 401, Dec. 3, 1999, 113 Stat. 1615; Pub. L. 106–567, title IV, § 401, Dec. 27, 2000, 114 Stat. 2847; Pub. L. 107–108, title IV, § 401, Dec. 28, 2001, 115 Stat. 1403; Pub. L. 107–306, title VIII, § 841(e), Nov. 27, 2002, 116 Stat. 2432; Pub. L. 108–177, title IV, § 403, Dec. 13, 2003, 117 Stat. 2632; Pub. L. 108–458, title I, § 1071(b)(3)(D), (E), Dec. 17, 2004, 118 Stat. 3691.)

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. (g)(1). Pub. L. 108–458, § 1071(b)(3)(D), substituted ''Director of the Central Intelligence Agency'' for ''Director of Central Intelligence'' in introductory provisions.

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 House of Representatives and the 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)''.

1999—Subsec. (a). Pub. L. 106–120, § 401(a), substituted '', nonappropriated fund entities or instrumentalities associated or affiliated with the Agency, and other'' for ''and to other''.

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''.

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; Transition Provisions note under section 401 of this title.

AVAILABILITY OF FUNDS CREDITED TO CENTRAL SERVICES WORKING CAPITAL FUND

Pub. L. 111–118, div. A, title VIII, § 8035, Dec. 19, 2009, 123 Stat. 3436, provided in part: ''That funds appropriated, transferred, or otherwise credited to the Central Intelligence Agency Central Services Working Capital Fund during this or any prior or subsequent fiscal year shall remain available until expended''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 110–329, div. C, title VIII, § 8035, Sept. 30, 2008, 122 Stat. 3629.

Pub. L. 110–116, div. A, title VIII, § 8035, Nov. 13, 2007, 121 Stat. 1322.

Pub. L. 109–289, div. A, title VIII, § 8033, Sept. 29, 2006, 120 Stat. 1281.

Pub. L. 109–148, div. A, title VIII, § 8038, Dec. 30, 2005, 119 Stat. 2707.

Pub. L. 108–287, title VIII, § 8042, Aug. 5, 2004, 118 Stat. 979.

Pub. L. 108–87, title VIII, § 8042, Sept. 30, 2003, 117 Stat. 1081.

Pub. L. 107–248, title VIII, § 8042, Oct. 23, 2002, 116 Stat. 1546.

Pub. L. 107–117, div. A, title VIII, § 8045, Jan. 10, 2002, 115 Stat. 2257.

Pub. L. 106–259, title VIII, § 8045, Aug. 9, 2000, 114 Stat. 684.

Pub. L. 106–79, title VIII, § 8048, Oct. 25, 1999, 113 Stat. 1241.

Pub. L. 105–262, title VIII, § 8048, Oct. 17, 1998, 112 Stat. 2307.

§ 403v. Detail of employees

The Director may—

(1) detail any personnel of the Agency on a reimbursable basis indefinitely to the National Reconnaissance Office without regard to any limitation under law on the duration of details of Federal Government personnel; and

(2) hire personnel for the purpose of any detail under paragraph (1).

(June 20, 1949, ch. 227, § 22, as added Pub. L. 106–567, title IV, § 404, Dec. 27, 2000, 114 Stat. 2848.)

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.

§ 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 (i) 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 nonofficial 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 nonofficial 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 not 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.

(June 20, 1949, ch. 227, § 23, as added Pub. L. 108–487, title IV, § 402, Dec. 23, 2004, 118 Stat. 3946.)

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.

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.

§ 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; [1]

[1] So in original. Probably should be followed by ''and''.

(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. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts 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 report 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 and the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the effectiveness and costs of carrying out this section.

(Pub. L. 103–36, § 2, June 8, 1993, 107 Stat. 104; Pub. L. 103–226, § 8(b), Mar. 30, 1994, 108 Stat. 118;

Pub. L. 104–93, title IV, § 401, Jan. 6, 1996, 109 Stat. 968; Pub. L. 104–293, title IV, § 401, Oct. 11, 1996, 110 Stat. 3468; Pub. L. 106–120, title IV, § 402, Dec. 3, 1999, 113 Stat. 1616; Pub. L. 107–108, title IV, § 402, Dec. 28, 2001, 115 Stat. 1403; Pub. L. 107–306, title IV, § 401, Nov. 27, 2002, 116 Stat. 2403; Pub. L. 108–458, title I, § 1071(d), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 108–487, title IV, § 401(a), (b)(1), Dec. 23, 2004, 118 Stat. 3945, 3946.)

CODIFICATION

Section was formerly set out as a note under section 403–4 of this title.

Section was enacted as part of the Central Intelligence Agency Voluntary Separation Pay Act, and not as part of the Central Intelligence Agency Act of 1949 which is classified to section 403a et seq. of this title, or as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458, § 1071(d), amended par. (1) generally. Prior to amendment, par. (1) read: ''the term 'Director' means the Director of Central Intelligence; and''.

Subsecs. (f) to (h). Pub. L. 108–487, § 401(a), redesignated subsecs. (g) and (h) as (f) and (g), respectively, and struck out former subsec. (f), which related to termination of payments under this section.

Subsec. (i). Pub. L. 108–487, § 401(b)(1), struck out subsec. (i) which related to remittance of funds.

2002—Subsec. (f). Pub. L. 107–306, § 401(1), substituted ''September 30, 2005'' for ''September 30, 2003''.

Subsec. (i). Pub. L. 107–306, § 401(2), substituted ''2003, 2004, or 2005'' for ''or 2003''.

2001—Subsec. (f). Pub. L. 107–108, § 402(1), substituted ''September 30, 2003'' for ''September 30, 2002''.

Subsec. (i). Pub. L. 107–108, § 402(2), substituted ''2002, or 2003'' for ''or 2002''.

1999—Subsec. (f). Pub. L. 106–120, § 402(a), substituted ''September 30, 2002'' for ''September 30, 1999''.

Subsec. (i). Pub. L. 106–120, § 402(b), substituted '', 1999, 2000, 2001, or 2002'' for ''or fiscal year 1999''.

1996—Subsec. (f). Pub. L. 104–93, § 401(a), substituted ''September 30, 1999'' for ''September 30, 1997''.

Subsec. (i). Pub. L. 104–293 inserted at end: ''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).''

Pub. L. 104–93, § 401(b), added subsec. (i).

1994—Subsec. (b). Pub. L. 103–226, § 8(b), inserted four sentences at end relating to repayment of separation pay requirement.

EFFECTIVE DATE OF 2004 AMENDMENT

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; Transition Provisions note under section 401 of this title.

§ 404. Emergency preparedness

(a) Employment of personnel

The Administrator of the Federal Emergency Management Agency, subject to the direction of the President, 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 assist him in carrying out his functions.

(b) Functions

It shall be the function of the Administrator of the Federal Emergency Management Agency to advise the President concerning the coordination of military, industrial, and civilian mobilization, including—

(1) policies concerning industrial and civilian mobilization in order to assure the most effective mobilization and maximum utilization of the Nation's manpower in the event of war;

(2) programs for the effective use in time of war of the Nation's natural and industrial resources for military and civilian needs, for the maintenance and stabilization of the civilian economy in time of war, and for the adjustment of such economy to war needs and conditions;

(3) policies for unifying, in time of war, the activities of Federal agencies and departments engaged in or concerned with production, procurement, distribution, or transportation of military or civilian supplies, materials, and products;

(4) the relationship between potential supplies of, and potential requirements for, manpower, resources, and productive facilities in time of war;

(5) policies for establishing adequate reserves of strategic and critical material, and for the conservation of these reserves;

(6) the strategic relocation of industries, services, government, and economic activities, the continuous operation of which is essential to the Nation's security.

(c) Utilization of Government resources and facilities

In performing his functions, the Administrator of the Federal Emergency Management Agency shall utilize to the maximum extent the facilities and resources of the departments and agencies of the Government.

(July 26, 1947, ch. 343, title I, § 107, formerly § 103, 61 Stat. 499; Oct. 28, 1949, ch. 782, title IX, § 1106(a), 63 Stat. 972; 1950 Reorg. Plan No. 25, § 1, eff. July 9, 1950, 15 F.R. 4366, 64 Stat. 1280; 1953 Reorg. Plan No. 3, § 2(a), eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634; Sept. 3, 1954, ch. 1263, § 50, 68 Stat. 1244; 1958 Reorg. Plan No. 1, § 2, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799; Pub. L. 90–608, ch. IV, § 402, Oct. 21, 1968, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175; Ex. Ord. No. 12148, §§ 1–103, 4–102, July 20, 1979, 44 F.R. 43239; renumbered § 107, Pub. L. 102–496, title VII, § 705(a)(2), Oct. 24, 1992, 106 Stat. 3190; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsec. (a), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (a), ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''the Classification Act 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. 28, 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 in subsecs. (b) and (c) 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 Defense Mobilization and Federal Civil Defense Administration consolidated to form Office of Emergency Planning, an agency within Executive Office of President, by section 2 of Reorg. Plan No. 1 of 1958, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799, as amended, set out in the Appendix to Title 5, Government Organization and Employees, and functions vested by law in Office of Defense Mobilization and Director thereof transferred to President, with power to delegate, by section 1 of Reorg. Plan No. 1 of 1958.

Office of Emergency Planning changed to Office of Emergency Preparedness pursuant to section 402 of Pub. L. 90–608, Oct. 21, 1968, 82 Stat. 1194, which provided that references in laws to Office of Emergency Planning after Oct. 21, 1968, should be deemed references to Office of Emergency Preparedness.

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. 1089, 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. 10421, formerly set out below, with certain exceptions, transferred to Administrator of General Services by Ex. Ord. No. 11725, § 3, 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. 12148, 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 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.

''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. 109–295, set out as a Change of Name note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 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(f)(2) of Pub. L. 109–295, 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. 47491, as amended, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

OFFICE OF EMERGENCY PLANNING

Pub. L. 87–296, § 2, Sept. 22, 1961, 75 Stat. 630, provided that: ''Any reference in any other law to the Office of Civil and Defense Mobilization shall, after the date of this Act [Sept. 22, 1961], be deemed to refer to the 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 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 that Reorganization Plan No. 25 is today submitted to the Congress. 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

Eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634

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 20, 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.

SEC. 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 of them or in any combination of them, including the functions which were vested in the Army and Navy Munitions Board by the item No. (2) in section 6(a) of the said Act (60 Stat. 598) [former section 98e(a)(2) of this title], but excluding functions vested in the Secretary of the Interior by section 7 of said Act [former section 98f of this title].

(c) The functions vested in the Munitions Board by section 4(h) of the Commodity Credit Corporation Char-

ter Act, as amended (15 U.S.C. 714b(h)), and by section 204(e) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(e)) [now 40 U.S.C. 574(c)].

(d) All functions now vested by any statute in the Director of Defense Mobilization or in the Office of Defense Mobilization provided for in Executive Order Numbered 10193 (15 F.R. 9031) [revoked by Ex. Ord. No. 10480, 18 F.R. 4939, formerly set out as a note under section 2153 of Appendix to this title].

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.C. 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 is 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 2(a) of the Strategic and Critical Materials Stock Piling 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.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1953, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended.

The reorganization plan is designed to achieve two primary objectives: The first is to improve the organization of the Executive Office of the President; the second is to enable one Executive Office agency to exercise strong leadership in our national mobilization effort, including both current defense activities and readiness for any future national emergency.

The National Security Resources Board was established by the National Security Act of 1947 to advise the President concerning various aspects of future military, industrial, and civilian mobilization. The areas of responsibility assigned to the Board included the use of national and industrial resources for military and civilian needs; the sufficiency of productive facilities; the strategic relocation of industries; the mobilization and maximum utilization of manpower; and the maintenance and stabilization of the civilian economy.

The vigorous and efficient discharge of these vital functions is not well served by the simultaneous existence in the Executive Office of the President of the National Security Resources Board (charged with planning for the future) and the present Office of Defense Mobilization (charged with programs of the present). The progress of the current mobilization effort has made plain how artificial is the present separation of these functions.

Both functions should now be combined into one defense mobilization agency. Accordingly, the reorganization plan would create in the Executive Office of the President a new agency, to be known as the Office of Defense Mobilization. It would transfer to the new Office the functions of the Chairman of the National Security Resources Board and abolish that Board, including the offices of Chairman and Vice Chairman.

The reorganization plan also transfers to the new agency the statutory functions of the present Office of Defense Mobilization. These are of a minor nature, the major functions of the present Office of Defense Mobilization having been delegated to it by the President, principally under the Defense Production Act of 1950, as amended. It is my intention to transfer the latter functions to the new agency by Executive order, and to abolish the Office of Defense Mobilization established by Executive Order No. 10193. There will thus result a new agency which combines the activities of the National Security Resources Board and both the statutory and delegated functions of the heretofore existing Office of Defense Mobilization.

The proposed plan would also reorganize various activities relating to the stockpiling of strategic and critical materials. Those activities are principally provided for in the Strategic and Critical Materials Stock Piling Act, as amended. It has become increasingly apparent that the policy and program aspects of stockpiling are an integral part of mobilization planning. They should not be administered separately from plant expansion, conservation of materials, and materials procurement under the Defense Production Act of 1950, or from the duties placed in the National Security Resources Board by the National Security Act of 1947. 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. That Department 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 production 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. 171a(b)) [see 10 U.S.C. 113(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 quality 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 reorganization 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 by reason 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

Ex. Ord. No. 9905, Nov. 13, 1947, 12 F.R. 7613, as amended by Ex. Ord. No. 9931, Feb. 19, 1948, 13 F.R. 763, provided for membership of National Security Resources Board and defined functions, duties and authority of Chairman of Board.

EXECUTIVE ORDER NO. 10169

Ex. Ord. No. 10169, Oct. 11, 1950, 15 F.R. 6901, which provided for a National Advisory Committee on Mobilization Policy, was revoked by Ex. Ord. No. 10480, Aug. 14, 1953, 18 F.R. 4939, formerly set out under section 2153 of the Appendix to this title.

EXECUTIVE ORDER NO. 10421

Ex. Ord. No. 10421, Dec. 31, 1952, 18 F.R. 57, as amended by Ex. Ord. No. 10438, Mar. 13, 1953, 18 F.R. 1491; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which related to physical security of defense facilities, was revoked by Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out under section 5195 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 10438

Ex. Ord. No. 10438, Mar. 13, 1953, 18 F.R. 1491, which related to transfer of functions to Director of Defense Mobilization, was superseded by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, formerly set out under section 5195 of Title 42, The Public Health and Welfare.

§ 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 President 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.

(July 26, 1947, ch. 343, title I, § 108, formerly § 104, as added Pub. L. 99–433, title VI, § 603(a)(1), Oct. 1, 1986, 100 Stat. 1074; renumbered § 108, Pub. L. 102–496, title VII, § 705(a)(2), Oct. 24, 1992, 106 Stat. 3190; amended Pub. L. 106–65, div. A, title IX, § 901(b), Oct. 5, 1999, 113 Stat. 717.)

AMENDMENTS

1999—Subsec. (a)(3). Pub. L. 106–65 added par. (3).

NATIONAL COMMISSION ON THE FUTURE ROLE OF UNITED STATES NUCLEAR WEAPONS, PROBLEMS OF COMMAND, CONTROL, AND SAFETY OF SOVIET NUCLEAR WEAPONS, AND REDUCTION OF NUCLEAR WEAPONS

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, 1993, 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 foreign intelligence program

(a) Annual submission of multiyear national foreign intelligence program

The Director of Central Intelligence shall submit to the congressional committees specified in subsection (d) of this section each year a multiyear national foreign intelligence program plan reflecting the estimated expenditures and proposed appropriations required to support that program. Any such multiyear national foreign 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 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 Central 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 multiyear defense program submitted pursuant to section 114a[1] 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.

(Pub. L. 101–510, div. A, title XIV, § 1403, Nov. 5, 1990, 104 Stat. 1675; Pub. L. 104–106, div. A, title XV, § 1502(c)(4)(B), Feb. 10, 1996, 110 Stat. 507; Pub. L. 106–65, div. A, title X, § 1067(10), Oct. 5, 1999, 113 Stat. 774.)

REFERENCES IN TEXT

Section 114a of title 10, referred to in subsec. (c), was renumbered section 221 of title 10 by Pub. L. 102–484, div. A, title X, § 1002(c)(1), Oct. 23, 1992, 106 Stat. 2480.

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

1999—Subsec. (d)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

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 House of Representatives and the Select

[1] See References in Text note below.

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), added subsec. (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.

§ 404c. Annual report on United States security arrangements and commitments with other nations

(a) Report requirements

The President shall submit to the congressional committees specified in subsection (d) of this section each year a report (in both classified and unclassified form) on United States security arrangements with, and commitments to, other nations.

(b) Matters to be included

The President shall include in each such report the following:

(1) A description of—

(A) each security arrangement with, or commitment to, other nations, whether based upon (i) a formal document (including a mutual defense treaty, a pre-positioning arrangement or agreement, or an access agreement), or (ii) an expressed policy; and

(B) the historical origins of each such arrangement or commitment.

(2) An evaluation of the ability of the United States to meet its commitments based on the projected reductions in the defense structure of the United States.

(3) A plan for meeting each of those commitments with the force structure projected for the future.

(4) An assessment of the need to continue, modify, or discontinue each of those arrangements and commitments in view of the changing international security situation.

(c) Deadline for report

The President shall submit the report required by subsection (a) of this section not later than February 1 of each year.

(d) Specified congressional committees

The congressional committees referred to in subsection (a) of this section are the following:

(1) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

(2) The Committee on Armed Services and the Committee on International Relations of the House of Representatives.

(Pub. L. 101–510, div. A, title XIV, §1457, Nov. 5, 1990, 104 Stat. 1696; Pub. L. 104–106, div. A, title XV, §1502(c)(4)(C), Feb. 10, 1996, 110 Stat. 507; Pub. L. 106–65, div. A, title X, §1067(10), Oct. 5, 1999, 113 Stat. 774.)

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

1999—Subsec. (d)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (a). Pub. L. 104–106, §1502(c)(4)(C)(i), 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)(ii), 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.''

Subsec. (d). Pub. L. 104–106, §1502(c)(4)(C)(iii), added subsec. (d).

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.

§ 404d. Annual report on intelligence

(a) In general

(1)(A) Not later each year than the date provided in section 415b of this title, the President shall submit to the congressional intelligence committees a report on the requirements of the United States for intelligence and the activities of the intelligence community.

(B) Not later than January 31 each year, and included with the budget of the President for the next fiscal year under section 1105(a) of title 31, the President shall submit to the appropriate congressional committees the report described in subparagraph (A).

(2) The purpose of the report is to facilitate an assessment of the activities of the intelligence community during the preceding fiscal year and to assist in the development of a mission and a budget for the intelligence community for the fiscal year beginning in the year in which the report is submitted.

(3) The report shall be submitted in unclassified form, but may include a classified annex.

(b) Matters covered

(1) Each report under subsection (a) of this section shall—

(A) specify the intelligence required to meet the national security interests of the United States, and set forth an order of priority for the collection and analysis of intelligence required to meet such interests, for the fiscal year beginning in the year in which the report is submitted; and

(B) evaluate the performance of the intelligence community in collecting and analyzing intelligence required to meet such interests during the fiscal year ending in the year preceding the year in which the report is submit-

ted, including a description of the significant successes and significant failures of the intelligence community in such collection and analysis during that fiscal year.

(2) The report shall specify matters under paragraph (1)(A) in sufficient detail to assist Congress in making decisions with respect to the allocation of resources for the matters specified.

(c) "Appropriate congressional committees" defined

In this section, the term ''appropriate congressional committees'' means the following:

(1) The Committee on Appropriations and the Committee on Armed Services of the Senate.

(2) The Committee on Appropriations and the Committee on Armed Services of the House of Representatives.

(July 26, 1947, ch. 343, title I, § 109, as added Pub. L. 103–178, title III, § 304(a), Dec. 3, 1993, 107 Stat. 2034; amended Pub. L. 104–293, title VIII, § 803(a), (b)(1), Oct. 11, 1996, 110 Stat. 3475, 3476; Pub. L. 106–65, div. A, title X, § 1067(16), Oct. 5, 1999, 113 Stat. 775; Pub. L. 107–306, title VIII, § 811(b)(1)(B), Nov. 27, 2002, 116 Stat. 2422.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–306, § 811(b)(1)(B)(i), added par. (1) and struck out former par. (1), which directed the President to submit to the appropriate congressional committees a report on the requirements of the United States for intelligence and the activities of the intelligence community not later than Jan. 31 each year.

Subsec. (c). Pub. L. 107–306, § 811(b)(1)(B)(iii), struck out the subsec. (c) enacted by Pub. L. 103–178, which provided that the report under this section for any year should be submitted at the same time that the President submits the budget for the next fiscal year pursuant to section 1105 of title 31.

Subsec. (c)(1). Pub. L. 107–306, § 811(b)(1)(B)(ii)(I), substituted ''The Committee on Appropriations'' for ''The Select Committee on Intelligence, the Committee on Appropriations,''.

Subsec. (c)(2). Pub. L. 107–306, § 811(b)(1)(B)(ii)(II), substituted ''The Committee on Appropriations'' for ''The Permanent Select Committee on Intelligence, the Committee on Appropriations,''.

1999—Subsec. (c)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–293, § 803(b)(1), substituted ''intelligence'' for ''intelligence community activities'' in section catchline.

Subsecs. (a), (b). Pub. L. 104–293, § 803(a), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b), which read as follows:

''(a) IN GENERAL.—The Director of Central Intelligence shall submit to Congress an annual report on the activities of the intelligence community. The annual report under this section shall be unclassified.

''(b) MATTERS TO BE COVERED IN ANNUAL REPORT.—Each report under this section shall describe—

''(1) the activities of the intelligence community during the preceding fiscal year, including significant successes and failures that can be described in an unclassified manner; and

''(2) the areas of the world and the issues that the Director expects will require increased or unusual attention from the intelligence community during the next fiscal year.''

Subsec. (c). Pub. L. 104–293, § 803(a), added subsec. (c) providing definition.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Aug. 5, 1997, 62 F.R. 51367, provided:

Memorandum for Director of Central Intelligence

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate the functions conferred upon the President by section 803(a) of the Intelligence Authorization Act for Fiscal Year 1997, 50 U.S.C. section 404d, to the Director of Central Intelligence.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 404d–1. Transferred

CODIFICATION

Section 404d–1 of this title, act July 26, 1947, ch. 343, title I, § 110, as added Oct. 11, 1996, Pub. L. 104–293, title III, § 308(a), 110 Stat. 3466, which related to restrictions on intelligence sharing with United Nations, was renumbered section 112 of act July 26, 1947, by Pub. L. 105–107, title III, § 303(b), Nov. 20, 1997, 111 Stat. 2252, and was transferred to section 404g of this title.

§ 404e. National mission of National Geospatial-Intelligence Agency

(a) In general

In addition to the Department of Defense missions set forth in section 442 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.

(July 26, 1947, ch. 343, title I, § 110, formerly § 120, as added Pub. L. 104–201, div. A, title XI, § 1114(b), Sept. 23, 1996, 110 Stat. 2685; renumbered § 110, Pub. L. 105–107, title III, § 303(b), Nov. 20, 1997, 111 Stat. 2252; amended Pub. L. 108–136, div. A, title IX, § 921(c)(2), (e)(6), Nov. 24, 2003, 117 Stat. 1568, 1569; Pub. L. 108–458, title I, § 1071(a)(1)(I), (J), Dec. 17, 2004, 118 Stat. 3689.)

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''.

2003—Pub. L. 108–136, §921(e)(6)(B), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' in section catchline.

Subsec. (a). Pub. L. 108–136, §921(c)(2), (e)(6)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' and ''geospatial intelligence'' for ''imagery''.

Subsecs. (b), (c). Pub. L. 108–136, §921(e)(6)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

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; Transition Provisions note under section 401 of this title.

§ 404f. Repealed. Pub. L. 108–458, title I, § 1075, Dec. 17, 2004, 118 Stat. 3694

Section, act July 26, 1947, ch. 343, title I, §111, formerly §121, as added Pub. L. 104–201, div. A, title XI, §1114(c), Sept. 23, 1996, 110 Stat. 2685; renumbered §111, Pub. L. 105–107, title III, §303(b), Nov. 20, 1997, 111 Stat. 2252, related to collection tasking authority of Director of Central Intelligence.

EFFECTIVE DATE OF REPEAL

For Determination by President that repeal 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.

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) Annual and special reports

(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 submittal dates for such reports shall be as provided in section 415b of this title.

(c) Delegation of duties

The President may not delegate or assign the duties of the President under this section.

(d) 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.

(e) "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.

(July 26, 1947, ch. 343, title I, §112, formerly §110, as added Pub. L. 104–293, title III, §308(a), Oct. 11, 1996, 110 Stat. 3466; renumbered §112, Pub. L. 105–107, title III, §303(b), Nov. 20, 1997, 111 Stat. 2252; amended Pub. L. 107–306, title VIII, §811(b)(1)(C), Nov. 27, 2002, 116 Stat. 2422; Pub. L. 108–177, title III, §§361(b), 377(a), Dec. 13, 2003, 117 Stat. 2625, 2630; Pub. L. 108–458, title I, §§1071(a)(1)(K), (L), 1072(a)(4), Dec. 17, 2004, 118 Stat. 3689, 3692.)

CODIFICATION

Section was formerly classified to section 404d–1 of this title prior to renumbering by Pub. L. 105–107.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458, §1071(a)(1)(K), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (d)(1). Pub. L. 108–458, §1072(a)(4), which directed amendment of par. (1) by substituting ''section 403–1(i)'' for ''section 403–3(c)(6)'', 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, §377(a). See 2003 Amendment note below.

Pub. L. 108–458, §1071(a)(1)(L), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2003—Subsec. (b). Pub. L. 108–177, § 361(b)(1), substituted ''Annual'' for ''Periodic'' in heading.

Subsec. (b)(1). Pub. L. 108–177, § 361(b)(2), substituted ''annually'' 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)''.

2002—Subsec. (b)(3). Pub. L. 107–306 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.

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; Transition 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 station 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.

(July 26, 1947, ch. 343, title I, § 113, as added Pub. L. 105–107, title III, § 303(a), Nov. 20, 1997, 111 Stat. 2251; amended Pub. L. 107–108, title III, § 304, Dec. 28, 2001, 115 Stat. 1398; Pub. L. 107–306, title VIII, § 841(a), Nov. 27, 2002, 116 Stat. 2431; Pub. L. 108–458, title I, § 1071(a)(1)(M), Dec. 17, 2004, 118 Stat. 3689.)

REFERENCES IN TEXT

GS–15 of the General Schedule, referred to in subsec. (b)(2)(F), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (b)(2)(A). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in introductory provisions.

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 House of Representatives and the 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.''

2001—Subsec. (b). Pub. L. 107–108 designated existing provisions as par. (1) and added par. (2).

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; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE

Pub. L. 105–107, title III, § 303(d), Nov. 20, 1997, 111 Stat. 2252, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to an employee on detail on or after January 1, 1997.''

§ 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 above GS–15.

(C) Of all individuals hired by the element involved 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.

(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.

(July 26, 1947, ch. 343, title I, § 114, as added Pub. L. 105–272, title III, § 307(a), Oct. 20, 1998, 112 Stat. 2401; amended Pub. L. 107–306, title III, §§ 324, 353(b)(6), title VIII, §§ 811(b)(1)(D), 821, 822, Nov. 27, 2002, 116 Stat. 2393, 2402, 2422, 2426, 2427; Pub. L. 108–177, title III, § 361(c), (d), Dec. 13, 2003, 117 Stat. 2625; Pub. L. 108–458, title I, § 1071(a)(1)(N), (O), (3)(A), (7), Dec. 17, 2004, 118 Stat. 3689, 3690.)

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)(N), 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''.

Subsec. (c)(1). Pub. L. 108–458, § 1071(a)(3)(A), substituted ''Director of National Intelligence'' for ''Director''.

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(d)(2), redesignated subsec. (e) as (d).

Pub. L. 108–177, § 361(c)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 108–177, §361(c)(2), redesignated subsec. (f) as (e).

2002—Subsec. (a)(1). Pub. L. 107–306, §811(b)(1)(D)(i)(I), struck out ''the congressional intelligence committees and'' before ''the congressional leadership''.

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''.

Subsec. (c). Pub. L. 107–306, §324(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 107–306, §821(2), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 107–306, §353(b)(6), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''In this section:

''(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).

Subsec (e). Pub. L. 107–306, §822(2), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 107–306, §821(1), redesignated subsec. (d) as (e).

Subsec. (f). Pub. L. 107–306, §822(1), redesignated subsec. (e) as (f).

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. 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; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by 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.

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.

§ 404i–1. Annual report on improvement of financial statements for auditing purposes

Not later each year than the date provided in section 415b of this title, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Director of the National Security Agency, the Director of the Defense Intelligence Agency, and the Director of the National Geospatial-Intelligence Agency shall each submit to the congressional intelligence committees a report describing the activities being undertaken by such official to ensure that the financial statements of such agency can be audited in accordance with applicable law and requirements of the Office of Management and Budget.

(July 26, 1947, ch. 343, title I, §114A, as added Pub. L. 107–306, title VIII, §823(a), Nov. 27, 2002, 116 Stat. 2427; amended Pub. L. 108–136, div. A, title IX, §921(g), Nov. 24, 2003, 117 Stat. 1570; Pub. L. 108–458, title I, §1071(a)(4), Dec. 17, 2004, 118 Stat. 3690.)

AMENDMENTS

2004—Pub. L. 108–458 substituted ''Director of National Intelligence, the Director of the Central Intelligence Agency'' for ''Director of Central Intelligence''.

2003—Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

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; Transition Provisions note under section 401 of this title.

§ 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 ministers of diplomatic missions 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.

(July 26, 1947, ch. 343, title I, § 115, as added Pub. L. 106–120, title III, § 303(a), Dec. 3, 1999, 113 Stat. 1610; amended Pub. L. 108–458, title I, § 1071(a)(1)(P)–(R), Dec. 17, 2004, 118 Stat. 3689.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458, § 1071(a)(1)(P), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (b). Pub. L. 108–458, § 1071(a)(1)(Q), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (c)(1)(B). Pub. L. 108–458, § 1071(a)(1)(R), 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.

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; Transition Provisions 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.

(July 26, 1947, ch. 343, title I, § 116, as added Pub. L. 106–567, title III, § 305(a), Dec. 27, 2000, 114 Stat. 2838; amended Pub. L. 108–458, title I, §§ 1071(a)(1)(S), (3)(B), 1072(a)(5), Dec. 17, 2004, 118 Stat. 3689, 3690, 3692.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–458, § 1071(a)(1)(S), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in introductory provisions.

Subsec. (b). Pub. L. 108–458, § 1072(a)(5), which directed amendment of subsec. (b) by substituting ''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'' 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'', 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.

Pub. L. 108–458, § 1071(a)(3)(B), 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 place it appeared 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 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; Transition Provisions note under section 401 of this title.

§ 404*l*. 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.

(July 26, 1947, ch. 343, title I, § 117, as added Pub. L. 106–567, title III, § 307(a), Dec. 27, 2000, 114 Stat. 2839; amended Pub. L. 108–458, title I, § 1071(a)(1)(T), Dec. 17, 2004, 118 Stat. 3689.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458 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.

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; Transition Provisions note under section 401 of this title.

§ 404m. Semiannual report on financial intelligence on terrorist assets

(a) Semiannual report

On a semiannual 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 six-month 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 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;

(3) 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

(4) 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, and the Committee on Financial Services of the House of Representatives.

(2) The Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(July 26, 1947, ch. 343, title I, § 118, as added Pub. L. 107–306, title III, § 342(a)(1), Nov. 27, 2002, 116 Stat. 2398.)

§ 404n. National Virtual Translation Center

(a) Establishment

The Director of National Intelligence shall establish in the intelligence community an element 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 [1]

(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 90 days after November 27, 2002.

(Pub. L. 107–306, title III, § 313, Nov. 27, 2002, 116 Stat. 2391; Pub. L. 108–458, title I, § 1071(g)(2)(A)(i), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 108–487, title III, § 304, Dec. 23, 2004, 118 Stat. 3944.)

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

2004—Subsec. (a). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence, acting as the head of the intelligence community,''.

Subsec. (c). Pub. L. 108–487, § 304(a)(2), added subsec. (c). Former subsec. (c) redesignated (d).

[1] So in original. Probably should be followed by a period.

Subsec. (d). Pub. L. 108–487, § 304(a)(1), (b), redesignated subsec. (c) as (d) and added par. (3). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108–487, § 304(a)(1), redesignated subsec. (d) as (e).

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; 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.

(Pub. L. 107–306, title III, § 341, Nov. 27, 2002, 116 Stat. 2398; Pub. L. 108–458, title I, § 1071(g)(2)(C), Dec. 17, 2004, 118 Stat. 3691.)

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

2004—Subsec. (a). Pub. L. 108–458 substituted ''Director of National Intelligence shall establish within the Central Intelligence Agency'' for ''Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency''.

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; Transition Provisions note under section 401 of this title.

§ 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 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) Reporting and certification

(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 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.

(e) Report on criteria for information sharing

(1) Not later then 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.

(f) 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.

(g) 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.

(h) 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.

(Pub. L. 107–306, title III, § 343, Nov. 27, 2002, 116 Stat. 2399; Pub. L. 108–177, title III, § 377(d), Dec. 13, 2003, 117 Stat. 2631; Pub. L. 108–458, title I, §§ 1071(g)(2)(A)(ii), 1072(d)(1)(A), Dec. 17, 2004, 118 Stat. 3691, 3693.)

REFERENCES IN TEXT

Section 403–3 of this title, referred to in subsec. (e)(2), was repealed and a new section 403–3 enacted by Pub. L. 108–458, title I, § 1011(a), Dec. 17, 2004, 118 Stat. 3643, without corresponding amendment to subsec. (e)(2) of this section. The new section 403–3 contains a subsec. (c) relating to the composition of the Office of the Director of National Intelligence.

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

2004—Subsec. (a)(1). Pub. L. 108–458, § 1071(g)(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(i)'' for ''section 403–3(c)(6)'', 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. 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; Transition Provisions note under section 401 of this title.

§ 404n–3. Repealed. Pub. L. 108–177, title III, § 361(e), Dec. 13, 2003, 117 Stat. 2625

Section, Pub. L. 107–306, title VIII, § 827, Nov. 27, 2002, 116 Stat. 2430, related to annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 31, 2003, see section 361(n) of Pub. L. 108–177, set out as an Effective Date of 2003 Amendment note under section 1611 of Title 10, Armed Forces.

§ 404*o*. National Counterterrorism Center

(a) Establishment of Center

There is within the Office of the Director of National Intelligence a National Counterterrorism Center.

(b) Director of National Counterterrorism Center

(1) There is a Director of the National Counterterrorism Center, who shall be the head of the National Counterterrorism Center, and who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Director of the National Counterterrorism Center may not simultaneously serve in any other capacity in the executive branch.

(c) Reporting

(1) The Director of the National Counterterrorism Center shall report to the Director of

[1] See References in Text note below.

National Intelligence with respect to 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 (h) of this section.

(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 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 planning and operations 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.

(July 26, 1947, ch. 343, title I, §119, as added Pub. L. 108–458, title I, §1021, Dec. 17, 2004, 118 Stat. 3672.)

EFFECTIVE DATE

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.

STRATEGY FOR COUNTERTERRORIST TRAVEL INTELLIGENCE

Pub. L. 108–458, title VII, §7201(b), Dec. 17, 2004, 118 Stat. 3809, 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 revoked by Ex. Ord. No. 12333, §3.6, Dec. 4, 1981, 46 F.R. 59954, as amended by Ex. Ord. No. 13470, §4(j), July 30, 2008, 73 F.R. 45341, set out as a note under section 401 of this title.

§ 404*o*–1. National Counter Proliferation Center

(a) Establishment

Not later than 18 months after December 17, 2004, 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.

(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.

(July 26, 1947, ch. 343, title I, §119A, as added Pub. L. 108–458, title I, §1022, Dec. 17, 2004, 118 Stat. 3675.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(1), probably means Pub. L. 108–458, known as the Intelligence Reform and Terrorism Prevention Act of 2004, which enacted this section. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 401 of this title and Tables.

The Executive Order in February 2004 establishing the President's Commission on Weapons of Mass Destruction, referred to in subsec. (d)(1), is Ex. Ord. No. 13328, Feb. 6, 2004, 69 F.R. 6901, which was revoked by Ex. Ord. No. 13385, §3(a), Sept. 29, 2005, 70 F.R. 57990, and was formerly set out as a note under section 2301 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.

DELEGATION OF FUNCTIONS

Reporting functions of President under this section assigned to the Director of National Intelligence by section 3 of Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 48633, set out as a note under section 301 of Title 3, The President.

§ 404*o*–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 the head of 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.

(July 26, 1947, ch. 343, title I, §119B, as added Pub. L. 108–458, title I, §1023, Dec. 17, 2004, 118 Stat. 3676.)

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.

SUBCHAPTER II—MISCELLANEOUS AND CONFORMING PROVISIONS

§ 405. Advisory committees; appointment; compensation of part-time personnel; applicability of other laws

(a) The Administrator of the Federal Emergency Management Agency, the Director of National Intelligence, and the National Security Council, acting through its Executive Secretary, are authorized to appoint such advisory committees and to employ, consistent with other provisions of this Act, such part-time advisory personnel as they may deem necessary in carrying out their respective functions and the functions of agencies under their control. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such service. Retired members of the uniformed services employed by the Director of National Intelligence who hold no other office or position under the United States for which they receive compensation, other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a daily rate not to exceed the daily equivalent of the rate of pay in effect for grade GS–18 of the General Schedule established by section 5332 of title 5, as determined by the appointing authority.

(b) Service of an individual as a member of any such advisory committee, or in any other part-time capacity for a department or agency hereunder, shall not be considered as service bringing such individual within the provisions of section 203, 205, or 207 of title 18, unless the act of such individual, which by such section is made unlawful when performed by an individual referred to in such section, is with respect to any particular matter which directly involves a department or agency which such person is advising or in which such department or agency is directly interested.

(July 26, 1947, ch. 343, title III, § 303, 61 Stat. 507; Aug. 10, 1949, ch. 412, § 10(c), 63 Stat. 585; Sept. 3, 1954, ch. 1263, § 8, 68 Stat. 1228; Aug. 10, 1956, ch. 1041, § 53(b), 68A Stat. 676, 684; 1958 Reorg. Plan No. 1, § 2, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799; Pub. L. 90–608, ch. IV, § 402, Oct. 21, 1968, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175; Ex. Ord. No. 12148, §§ 1–103, 4–102, July 20, 1979, 44 F.R. 43239; Pub. L. 97–89, title V, § 504, Dec. 4, 1981, 95 Stat. 1153; Pub. L. 100–453, title V, § 503, Sept. 29, 1988, 102 Stat. 1910; Pub. L. 108–458, title I, § 1071(a)(1)(U), Dec. 17, 2004, 118 Stat. 3689; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

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

2004—Subsec. (a). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in two places.

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–18 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 119(e) of title 41''.

1949—Subsec. (a). Act Aug. 10, 1949, inserted reference to National Security Council, and increased per diem payable to consultants from $35 to $50.

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; Transition Provisions note under section 401 of this title.

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.

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.

''Administrator of the Federal Emergency Management Agency'' substituted in subsec. (a) for ''Director of the Office of Defense Mobilization''. See notes set out under section 404 of this title.

National Security Council transferred to Executive Office of President by Reorg. Plan No. 4 of 1949, eff. Aug. 19, 1949, 14 F.R. 5227, 63 Stat. 1067. See note set out under section 402 of this title.

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 I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 406. Omitted

CODIFICATION

Section, act June 24, 1948, ch. 632, 62 Stat. 648, which related to authority of former Chairman of National Security Resources Board to appoint advisory committee members and part-time advisory personnel at rates up to $50 per day, has been superseded by section 405(a) of this title.

§ 407. Study or plan of surrender; use of appropriations

No part of the funds appropriated in any act shall be used to pay (1) any person, firm, or corporation, 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.

(Pub. L. 85–766, ch. XVI, § 1602, Aug. 27, 1958, 72 Stat. 884.)

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.

Title 4 of the Revised Statutes, referred to in text, was entitled ''Provisions Applicable to All Executive Departments'', and consisted of R.S. §§ 158 to 198. For provisions of the Code derived from such title 4, see sections 101, 301, 303, 304, 503, 2952, 3101, 3106, 3341, 3345 to 3349, 5535, and 5536 of Title 5, Government Organization and Employees; section 207 of Title 18, Crimes and Criminal Procedure; sections 514 and 520 of Title 28, Judiciary and Judicial Procedure; section 3321 of Title 31, Money and Finance.

CODIFICATION

Section was formerly classified to section 171–1 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.

§ 409. Definitions of military departments

(a) 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.

(b) The term ''Department of the Navy'' as used in this Act shall be construed to mean the Department of the Navy at the seat of the government; the headquarters, United States Marine Corps; the entire operating forces of the United States Navy, including naval aviation, and of the United States Marine Corps, including the reserve components of such forces; all field activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Department of the Navy; and the United States Coast Guard when operating as a part of the Navy pursuant to law.

(c) The term ''Department of the Air Force'' as used in this Act shall be construed to mean the Department of the Air Force 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 Air Force.

(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 act Aug. 10, 1956, subsecs. (a), (b), and (c) of this section were classified to sections 181–1(c), 411a(a), and 626(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. 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. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may 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[1] 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 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).

(July 26, 1947, ch. 343, title III, §301, as added Pub. L. 106–567, title III, §304(a), Dec. 27, 2000, 114 Stat. 2836; amended Pub. L. 107–306, title III, §353(b)(2)(A), title VIII, §841(b), Nov. 27, 2002, 116 Stat. 2402, 2431.)

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.

PRIOR 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''.

[1] So in original. Probably should be ''including''.

§ 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 8344 and 8468 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.

(July 26, 1947, ch. 343, title III, §302, as added Pub. L. 108–177, title III, §311(a)(1), Dec. 13, 2003, 117 Stat. 2605.)

PRIOR PROVISIONS

A prior section 302 of act July 26, 1947, ch. 343, title III, 61 Stat. 507; Aug. 10, 1949, ch. 412, §10(b), 63 Stat. 585; Aug. 10, 1956, ch. 1041, §21, 70A Stat. 629, was classified to section 171c–2 of former Title 5, Executive Departments and Government Officers and Employees, prior to repeal by Pub. L. 87–651, title III, §307A, Sept. 7, 1962, 76 Stat. 526.

§ 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.

(Pub. L. 108–177, title III, § 311(b), Dec. 13, 2003, 117 Stat. 2605.)

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.

(July 26, 1947, ch. 343, title III, § 308, 61 Stat. 509; Aug. 10, 1949, ch. 412, § 12(e), 63 Stat. 591.)

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 171i of former Title 5, Executive Department and Government Officers and Employees, amended sections 1 and 11 of former Title 5 and section 1517 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 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 171n 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

1949—Subsec. (b). Act Aug. 10, 1949, substituted definition of ''Department of Defense'' for definition of ''budget program''.

§ 411. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act (other than the provisions and purposes of sections 102, 103, 104, 105 [50 U.S.C. 403, 403–3, 403–4, 403–5] and titles V, VI, and VII [50 U.S.C. 413 et seq., 421 et seq., 431 et seq.]).

(July 26, 1947, ch. 343, title III, § 307, 61 Stat. 509; Pub. L. 103–178, title III, § 309, Dec. 3, 1993, 107 Stat. 2036.)

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. Titles V, VI, and VII of the Act are classified generally to subchapters III (§ 413 et seq.), IV (§ 421 et seq.), and V (§ 431 et seq.) of this chapter, respectively. 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 171m 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 man-

ner 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. 585.)

REFERENCES IN TEXT

This title, referred to in text, means title IV of act July 26, 1947, ch. 343, 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 3014, 5061, 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, 2207, 126, 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.

SUBCHAPTER 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 requiring the approval of 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 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 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 such 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 authority 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.

(July 26, 1947, ch. 343, title V, § 501, as added Pub. L. 102–88, title VI, § 602(a)(2), Aug. 14, 1991, 105 Stat. 441; amended Pub. L. 107–306, title III, §§ 342(b), 353(b)(3)(A), (7), Nov. 27, 2002, 116 Stat. 2399, 2402; Pub. L. 108–458, title I, § 1071(a)(1)(V), Dec. 17, 2004, 118 Stat. 3689.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), 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.

PRIOR PROVISIONS

A prior section 413, act July 26, 1947, ch. 343, title V, § 501, as added Oct. 14, 1980, Pub. L. 96–450, title IV, § 407(b)(1), 94 Stat. 1981, related to Congressional oversight of intelligence activities, prior to repeal by Pub. L. 102–88, § 602(a)(2).

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2002—Subsec. (a). Pub. L. 107–306, § 353(b)(3)(A), substituted ''congressional intelligence committees'' for ''intelligence committees'' wherever appearing.

Subsec. (a)(2), (3). Pub. L. 107–306, § 353(b)(7), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''As used in this subchapter, the term 'congressional intelligence committees' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.''

Subsecs. (b) to (e). Pub. L. 107–306, § 353(b)(3)(A), substituted ''congressional intelligence committees'' for ''intelligence committees'' wherever appearing.

Subsec. (f). Pub. L. 107–306, § 342(b), inserted '', and includes financial intelligence activities'' before period at end.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memo-

randum 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; Transition Provisions note under section 401 of this title.

§ 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, 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, 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.

(July 26, 1947, ch. 343, title V, § 502, as added Pub. L. 102–88, title VI, § 602(a)(2), Aug. 14, 1991, 105 Stat. 442; amended Pub. L. 107–108, title III, § 305, Dec. 28, 2001, 115 Stat. 1398; Pub. L. 107–306, title III, § 353(b)(3)(B), Nov. 27, 2002, 116 Stat. 2402; Pub. L. 108–458, title I, § 1071(a)(1)(W), (X), Dec. 17, 2004, 118 Stat. 3689.)

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

2004—Subsec. (a). Pub. L. 108–458, § 1071(a)(1)(W), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in introductory provisions.

Subsec. (c). Pub. L. 108–458, § 1071(a)(1)(X), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2002—Subsecs. (a), (b). Pub. L. 107–306 substituted ''congressional intelligence committees'' for ''intelligence committees'' wherever appearing.

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 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; Transition Provisions 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 400, 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 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 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 chairmen 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,[1] 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. When access to a finding is limited to the Members of Congress specified in paragraph (2), a statement of the reasons for limiting such access shall also be provided.

(d) Changes in previously approved actions

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 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.

(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 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 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.

(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.

(July 26, 1947, ch. 343, title V, § 503, as added Pub. L. 102–88, title VI, § 602(a)(2), Aug. 14, 1991, 105 Stat. 442; amended Pub. L. 107–306, title III, § 353(b)(3)(C), (8), Nov. 27, 2002, 116 Stat. 2402; Pub. L. 108–458, title I, § 1071(a)(1)(Y), Dec. 17, 2004, 118 Stat. 3689.)

[1] So in original. Probably should be ''subsection,''.

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

2004—Subsec. (b). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in introductory provisions.

2002—Subsecs. (b), (c)(1) to (3). Pub. L. 107–306, § 353(b)(3)(C), substituted ''congressional intelligence committees'' for ''intelligence committees'' wherever appearing.

Subsec. (c)(4). Pub. L. 107–306, § 353(b)(8), substituted ''congressional intelligence committee'' for ''intelligence committee''.

Subsec. (d). Pub. L. 107–306, § 353(b)(3)(C), substituted ''congressional intelligence committees'' for ''intelligence committees''.

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; Transition Provisions 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 need for funds for such activity is based on unforseen[1] requirements; 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.

[1] So in original. Probably should be ''unforeseen''.

(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.

(July 26, 1947, ch. 343, title V, §504, formerly §502, as added Pub. L. 99–169, title IV, §401(a), Dec. 4, 1985, 99 Stat. 1004; renumbered §504 and amended Pub. L. 102–88, title VI, §§602(a)(1), (c)(1), 603, Aug. 14, 1991, 105 Stat. 441, 444; Pub. L. 107–306, title III, §353(b)(3)(D), Nov. 27, 2002, 116 Stat. 2402; Pub. L. 108–458, title I, §1071(a)(1)(Z), (AA), (5), Dec. 17, 2004, 118 Stat. 3689, 3690.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–458, §1071(a)(5), substituted ''Director of the Central Intelligence Agency'' for ''Director of Central Intelligence''.

Subsec. (a)(3)(C). Pub. L. 108–458, §1071(a)(1)(Z), substituted ''Director of National Intelligence'' 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''.

2002—Subsec. (d)(2). Pub. L. 107–306 substituted ''congressional intelligence committees'' for ''intelligence committees''.

1991—Subsec. (a)(2). Pub. L. 102–88, §602(c)(1), substituted ''section 413b'' for ''section 413''.

Subsecs. (c) to (e). Pub. L. 102–88, §603, added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

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; 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. 103–139, title VIII, §8107, Nov. 11, 1993, 107 Stat. 1464, provided that: ''During the current fiscal year and thereafter, no funds may be made available through transfer, reprogramming, or other means between the Central Intelligence Agency and the Department of Defense for any intelligence or special activity different from that previously justified to the Congress unless the Director of Central Intelligence or the Secretary of Defense has notified the House and Senate Appropriations Committees of the intent to make such funds available for such activity.''

[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.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–396, title IX, §9014, Oct. 6, 1992, 106 Stat. 1903.

Pub. L. 102–172, title VIII, §8014, Nov. 26, 1991, 105 Stat. 1174.

Pub. L. 101–511, title VIII, §8015, Nov. 5, 1990, 104 Stat. 1878.

Pub. L. 101–165, title IX, §9022, Nov. 21, 1989, 103 Stat. 1134.

Pub. L. 100–463, title VIII, §8035, Oct. 1, 1988, 102 Stat. 2270–23.

Pub. L. 100–202, §101(b) [title VIII, §8037], Dec. 22, 1987, 101 Stat. 1329–43, 1329–68.

SENSE OF CONGRESS REGARDING DISCLOSURE OF ANNUAL INTELLIGENCE BUDGET

Pub. L. 102–496, title III, §303, Oct. 24, 1992, 106 Stat. 3183, provided that: ''It is the sense of Congress that, beginning in 1993, and in each year thereafter, the ag-

gregate amount requested and authorized for, and spent on, intelligence and intelligence-related activities should be disclosed to the public in an appropriate manner.'' Similar provisions were contained in the following prior appropriation act: Pub. L. 102–183, title VII, § 701, Dec. 4, 1991, 105 Stat. 1270.

LIMITATION OF EXPENDITURE OF FUNDS APPROPRIATED FOR DEPARTMENT OF DEFENSE INTELLIGENCE PROGRAMS

Pub. L. 102–172, title VIII, § 8089, 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

Pub. L. 99–169, title IV, § 401(c), Dec. 4, 1985, 99 Stat. 1006, provided that the amendment made by section 401(a) of Pub. L. 99–169, enacting this section, would not apply with respect to funds appropriated to the Director of Central Intelligence under the heading ''ENHANCED SECURITY COUNTERMEASURES CAPABILITIES'' in the Supplemental Appropriations Act, 1985, Pub. L. 99–88, Aug. 15, 1985, 99 Stat. 311.

§ 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 the Federal Property and Administrative Services Act of 1949,[1] 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.

(July 26, 1947, ch. 343, title V, § 505, formerly § 503, as added Pub. L. 99–569, title VI, § 602(a), Oct. 27, 1986, 100 Stat. 3203; renumbered § 505 and amended Pub. L. 102–88, title VI, §§ 602(a)(1), (c)(2), 604, Aug. 14, 1991, 105 Stat. 441, 444, 445; Pub. L. 103–160, div. A, title VIII, § 828(d)(1), Nov. 30, 1993, 107 Stat. 1715.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a)(2)(B)(i), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424. Part II of the Act is classified generally to subchapter II (§ 2301 et seq.) of chapter 32 of Title 22, Foreign Relations and Intercourse. For provisions deeming references to subchapter II to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, see section 202(b) of Pub. L. 92–226, set out as a note under section 2346 of Title 22, and sections 2348c and 2349aa–5 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

The Arms Export Control Act, referred to in subsec. (a)(2)(B)(i), is Pub. L. 90–269, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a)(2)(B)(i), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1993—Subsec. (a)(2)(B)(i). Pub. L. 103–160 substituted ''section 7307(a)'' for ''section 7307(b)(1)''.

1991—Subsec. (a)(1). Pub. L. 102–88 inserted '', or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services,'' after ''service'' and substituted ''this subchapter'' for ''section 413 of this title''.

§ 415a. Specificity of National Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence

(a) In general

The budget justification materials submitted to Congress in support of the budget of the

[1] See References in Text note below.

President for a fiscal year that is submitted to Congress under section 1105(a) of title 31 shall set forth separately the aggregate amount requested for that fiscal year for the National Intelligence Program for each of the following:

(1) Counterterrorism.
(2) Counterproliferation.
(3) Counternarcotics.
(4) Counterintelligence.

(b) Election of classified or unclassified form

Amounts set forth under subsection (a) of this section may be set forth in unclassified form or classified form, at the election of the Director of Central Intelligence.

(July 26, 1947, ch. 343, title V, § 506, as added Pub. L. 107–306, title III, § 311(a), Nov. 27, 2002, 116 Stat. 2390; amended Pub. L. 108–458, title I, § 1074(b)(1)(A), Dec. 17, 2004, 118 Stat. 3694.)

AMENDMENTS

2004—Pub. L. 108–458, § 1074(b)(1)(A)(ii), struck out ''Foreign'' before ''Intelligence'' in section catchline.

Subsec. (a). Pub. L. 108–458, § 1074(b)(1)(A)(i), substituted ''National Intelligence Program'' for ''National Foreign Intelligence Program''.

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.

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; Transition Provisions note under section 401 of this title.

§ 415a–1. Budget treatment of costs of acquisition of major systems by the intelligence community

(a) Independent cost estimates

(1) The Director of National Intelligence shall, in consultation with the head of each element of the intelligence community concerned, prepare an independent cost estimate of the full lifecycle cost of development, procurement, and operation of each major system to be acquired by the intelligence community.

(2) Each independent cost estimate for a major system shall, to the maximum extent practicable, specify the amount required to be appropriated and obligated to develop, procure, and operate the major system in each fiscal year of the proposed period of development, procurement, and operation of the major system.

(3)(A) In the case of a program of the intelligence community that qualifies as a major system, an independent cost estimate shall be 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.

(B) In the case of a program of the intelligence community for which an independent cost estimate was not previously required to be prepared under this section, including a program for which development or procurement commenced before December 13, 2003, if the aggregate future costs of development or procurement (or any combination of such activities) of the program will exceed $500,000,000 (in current fiscal year dollars), the program shall qualify as a major system for purposes of this section, and an independent cost estimate for such major system shall be prepared before the submission to Congress of the budget of the President for the first fiscal year thereafter in which appropriated funds are anticipated to be obligated for such major system.

(4) The independent cost estimate for a major system shall be updated upon—

(A) the completion of any preliminary design review associated with the major system;
(B) any significant modification to the anticipated design of the major system; or
(C) any change in circumstances that renders the current independent cost estimate for the major system inaccurate.

(5) Any update of an independent cost estimate for a major system under paragraph (4) shall meet all requirements for independent cost estimates under this section, and shall be treated as the most current independent cost estimate for the major system until further updated under that paragraph.

(b) Preparation of independent cost estimates

(1) The Director shall establish within the Office of the Director of National Intelligence for Community Management an office which shall be responsible for preparing independent cost estimates, and any updates thereof, under subsection (a) of this section, unless a designation is made under paragraph (2).

(2) In the case of the acquisition of a major system for an element of the intelligence community within the Department of Defense, the Director and the Secretary of Defense shall provide that the independent cost estimate, and any updates thereof, under subsection (a) of this section be prepared by an entity jointly designated by the Director and the Secretary in accordance with section 2434(b)(1)(A) of title 10.

(c) Utilization in budgets of President

(1) If the budget of the President requests appropriations for any fiscal year for the development or procurement of a major system by the intelligence community, the President shall, subject to paragraph (2), request in such budget an amount of appropriations for the development or procurement, as the case may be, of the major system that is equivalent to 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.

(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 (in current fiscal year 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, 117 Stat. 2607; amended Pub. L. 108–458, title I, §§ 1071(a)(1)(BB), 1072(a)(6), Dec. 17, 2004, 118 Stat. 3689, 3692.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458, § 1071(a)(1)(BB), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (b)(1). Pub. L. 108–458, § 1072(a)(6), substituted ''Office of the Director of National Intelligence'' for ''Office of the Deputy 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.

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; Transition Provisions note under section 401 of this title.

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 2434 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

Pub. L. 108–177, title III, §312(d), Dec. 13, 2003, 117 Stat. 2609, provided that:

''(1)(A) 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 1105(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.

''(B) 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].

''(2) Commencing as of the date of the submittal to Congress of the budget of the President for fiscal year 2006 pursuant to section 1105(a) of title 31, United States Code, no funds may be obligated or expended for the development or procurement of a major system until the President has complied with the requirements of section 506A of the National Security Act of 1947 (as added by subsection (b)) [50 U.S.C. 415a–1] with respect to such major system.

''(3) In this subsection, the terms 'independent cost estimate' and 'major system' have the meaning given such terms in subsection (e) of section 506A of the National Security Act of 1947 (as so added) [50 U.S.C. 415a–1(e)].''

§ 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.

(1) 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–40[1] Budget Item Justification.

(2) 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.

(Pub. L. 110–329, div. C, title VIII, §8107, Sept. 30, 2008, 122 Stat. 3644.)

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.

SIMILAR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation act:

Pub. L. 111–118, div. A, title VIII, §8100, Dec. 19, 2009, 123 Stat. 3450.

[1] So in original. Probably should be followed by a comma.

§ 415a–3. Future-years intelligence program: submission to Congress

The Director of National Intelligence 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 intelligence program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years intelligence program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(Pub. L. 111–118, div. A, title VIII, §8104, Dec. 19, 2009, 123 Stat. 3451.)

CODIFICATION

Section was enacted as part of the Department of Defense Appropriations Act, 2010, and not as part of the National Security Act of 1947 which comprises this chapter.

SIMILAR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation act:

Pub. L. 110–329, div. C, title VIII, §8112, Sept. 30, 2008, 122 Stat. 3645.

§ 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 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.

(C) The annual report on the protection of the identities of covert agents required by section 423 of this title.

(D) 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.

(E) 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.

(F) The annual report on commercial activities as security for intelligence collection required by section 437(c) of title 10.

(G) The annual update on foreign industrial espionage required by section 2170b(b) of the Appendix to this title.

(H) 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.

(I) The annual report on activities under the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102–183; 50 U.S.C. 1901 et seq.) required by section 806(a) of that Act (50 U.S.C. 1906(a)).

(N)[1] The annual report on hiring and retention of minority employees in the intelligence

[1] So in original. There are no subpars. designated ''(J)'', ''(K)'', ''(L)'', or ''(M)''.

community required by section 404i(c) of this title.

(2) 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)(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.

(C) The annual report on improvements of the financial statements of the intelligence community for auditing purposes required by section 404i–1 of this title.

(D) The annual report on counterdrug intelligence matters required by section 826 of the Intelligence Authorization Act for Fiscal Year 2003.

(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 403q(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 activities of the Diplomatic Telecommunications Service Program Office (DTS–PO) required by section 7302(a)(6)(D)(ii) of title 22.

(4) 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.[2]

(5) The semiannual provision of information on requests for financial information for foreign counterintelligence purposes required by section 3414(a)(5)(C) of title 12.

(6) The semiannual report on financial intelligence on terrorist assets required by section 404m of this title.

(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.

(July 26, 1947, ch. 343, title V, § 507, as added Pub. L. 107–306, title VIII, § 811(a)(1), Nov. 27, 2002, 116 Stat. 2418; amended Pub. L. 108–177, title III, § 361(*l*), Dec. 13, 2003, 117 Stat. 2626.)

REFERENCES IN TEXT

Section 8H(g) of the Inspector General Act of 1978, referred to in subsec. (a)(1)(D), is section 8H(g) of Pub. L. 95–452, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The David L. Boren National Security Education Act of 1991, referred to in subsec. (a)(1)(I), is title VIII of Pub. L. 102–183, Dec. 4, 1991, 105 Stat. 1271, as amended, which is classified generally to chapter 37 (§ 1901 et seq.) of this title. For complete classification of this Act to the Code, see section 1901(a) of this title and Tables.

Section 826 of the Intelligence Authorization Act for Fiscal Year 2003, referred to in subsec. (a)(2)(D), is section 826 of Pub. L. 107–306, which is set out as a note under section 873 of Title 21, Food and Drugs.

The Classified Information Procedures Act, referred to in subsec. (b)(2), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, as amended, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Section 1681u(h)(2) of title 15, referred to in subsec. (b)(4), was in the original ''section 624(h)(2) of the Fair Credit Reporting Act'', which was translated as reading

[2] See References in Text note below.

''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.

AMENDMENTS

2003—Subsec. (a)(1)(A). Pub. L. 108–177, §361(*l*)(1)(A)(i), (ii), 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. (a)(1)(B). Pub. L. 108–177, §361(*l*)(1)(A)(iii), added subpar. (B). Former subpar. (B) redesignated (A).

Subsec. (a)(1)(C). Pub. L. 108–177, §361(*l*)(1)(A)(i), (ii), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''The annual report on intelligence community cooperation with Federal law enforcement agencies required by section 404i(a)(2) of this title.''

Subsec. (a)(1)(D). Pub. L. 108–177, §361(*l*)(1)(A)(ii), redesignated subpar. (E) as (D). Former subpar. (D) redesignated (C).

Subsec. (a)(1)(E). Pub. L. 108–177, §361(*l*)(1)(A)(iv), added subpar. (E). Former subpar. (E) redesignated (D).

Subsec. (a)(1)(G). Pub. L. 108–177, §361(*l*)(1)(A)(i), (ii), redesignated subpar. (H) as (G) and struck out former subpar. (G) which read as follows: ''The annual report on expenditures for postemployment assistance for terminated intelligence employees required by section 1611(e)(2) of title 10.''

Subsec. (a)(1)(H). Pub. L. 108–177, §361(*l*)(1)(A)(ii), redesignated subpar. (K) as (H). Former subpar. (H) redesignated (G).

Subsec. (a)(1)(I). Pub. L. 108–177, §361(*l*)(1)(A)(i), (ii), 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 402a(c)(6) of this title.''

Subsec. (a)(1)(J). Pub. L. 108–177, §361(*l*)(1)(A)(i), struck out subpar. (J) which read as follows: ''The annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets required by section 404n–3 of this title.''

Subsec. (a)(1)(K). Pub. L. 108–177, §361(*l*)(1)(A)(ii), redesignated subpar. (K) as (H).

Subsec. (a)(1)(L). Pub. L. 108–177, §361(*l*)(1)(A)(i), struck out subpar. (L) which read as follows: ''The annual report on exceptions to consumer disclosure requirements for national security investigations under section 1681b(b)(4)(E) of title 15.''

Subsec. (a)(1)(M). Pub. L. 108–177, §361(*l*)(1)(A)(ii), redesignated subpar. (M) as (I).

Subsec. (a)(1)(N). Pub. L. 108–177, §361(*l*)(1)(A)(ii), 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(*l*)(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 404i(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 540C(c)(2) of title 28.

''(F) The annual report on intelligence activities of the People's Republic of China required by section 308(c) of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 50 U.S.C. 402a note).''

Subsec. (a)(2)(A). Pub. L. 108–177, §361(*l*)(1)(B)(i), substituted ''section 404i(a)'' for ''section 404i(b)''.

Subsec. (a)(2)(B). Pub. L. 108–177, §361(*l*)(1)(B)(ii), substituted ''section 404i(c)'' for ''section 404i(d)''.

Subsec. (b). Pub. L. 108–177, §361(*l*)(2), redesignated pars. (2), (3), (5), (6), (7), and (8) as (1), (2), (3), (4), (5), and (6), respectively, and struck out former pars. (1) and (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

Amendment by 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.

PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE OR DEPARTMENT OF ENERGY

Pub. L. 108–487, title I, §107, Dec. 23, 2004, 118 Stat. 3943, provided that:

''(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.''

Similar provisions were contained in the following prior acts:

Pub. L. 108–177, title I, §107, Dec. 13, 2003, 117 Stat. 2604.

Pub. L. 107–306, title I, §109, Nov. 27, 2002, 116 Stat. 2389.

Pub. L. 107–108, title V, §505, Dec. 28, 2001, 115 Stat. 1406.

DEADLINE FOR SUBMITTAL OF VARIOUS OVERDUE REPORTS

Pub. L. 107–306, title VIII, §801, Nov. 27, 2002, 116 Stat. 2418, provided that certain overdue reports that the Director of Central Intelligence has sole or primary responsibility to present to Congress must be submitted to Congress no later than 180 days after Nov. 27, 2002, or amounts available to the Director to carry out the functions and duties of the Director's Office would be reduced by ⅓.

§ 415c. Availability to public of certain intelligence funding information

(a) Amounts appropriated each fiscal year

Not later than 30 days after the end of each fiscal year beginning with fiscal year 2007, the Director of National Intelligence shall disclose to the public the aggregate amount of funds ap-

propriated by Congress for the National Intelligence Program for such fiscal year.

(b) Waiver

Beginning with fiscal year 2009, the President may waive or postpone the disclosure required by subsection (a) for any fiscal year by, not later than 30 days after the end of such fiscal year, submitting to the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives—

(1) a statement, in unclassified form, that the disclosure required in subsection (a) for that fiscal year would damage national security; and

(2) a statement detailing the reasons for the waiver or postponement, which may be submitted in classified form.

(c) Definition

As used in this section, the term ''National Intelligence Program'' has the meaning given the term in section 401a(6) of this title.

(Pub. L. 110–53, title VI, § 601, Aug. 3, 2007, 121 Stat. 335.)

CODIFICATION

Section was enacted as part of the Implementing Recommendations of the 9/11 Commission Act of 2007, and not as part of the National Security Act of 1947 which comprises this chapter.

SUBCHAPTER IV—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

§ 421. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources

(a) Disclosure of information by persons having or having had access to classified information that identifies covert agent

Whoever, having or having had authorized access to classified information that identifies a 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 ten 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 identify 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 five 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.

(July 26, 1947, ch. 343, title VI, § 601, as added Pub. L. 97–200, § 2(a), June 23, 1982, 96 Stat. 122; amended Pub. L. 106–120, title III, § 304(b), Dec. 3, 1999, 113 Stat. 1611.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–120, § 304(b)(2)(A), substituted ''shall be fined under title 18'' for ''shall be fined not more than $50,000''.

Subsec. (b). Pub. L. 106–120, § 304(b)(2)(B), substituted ''shall be fined under title 18'' for ''shall be fined not more than $25,000''.

Subsec. (c). Pub. L. 106–120, § 304(b)(2)(C), substituted ''shall be fined under title 18'' for ''shall be fined not more than $15,000''.

Subsec. (d). Pub. L. 106–120, § 304(b)(1), added subsec. (d).

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.

(July 26, 1947, ch. 343, title VI, § 602, as added Pub. L. 97–200, § 2(a), June 23, 1982, 96 Stat. 122; amended Pub. L. 107–306, title III, § 353(b)(9), Nov. 27, 2002, 116 Stat. 2402.)

AMENDMENTS

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, and on any other matter relevant to the protection of the identities of covert agents. The date for the submittal of the report shall be the date provided in section 415b of this title.

(b) Exemption from disclosure

The report described in subsection (a) of this section shall be exempt from any requirement for publication or disclosure.

(July 26, 1947, ch. 343, title VI, § 603, as added Pub. L. 97–200, § 2(a), June 23, 1982, 96 Stat. 123; amended Pub. L. 107–306, title III, § 353(b)(1)(B), title VIII, § 811(b)(1)(E), Nov. 27, 2002, 116 Stat. 2402, 2422; Pub. L. 108–458, title I, § 1071(a)(1)(CC), Dec. 17, 2004, 118 Stat. 3689.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

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''.

Subsec. (b). Pub. L. 107–306, § 811(b)(1)(E)(ii), struck out at end ''The first such report shall be submitted no later than February 1, 1983.''

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; Transition Provisions 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).

(July 26, 1947, ch. 343, title VI, § 604, as added Pub. L. 97–200, § 2(a), June 23, 1982, 96 Stat. 123.)

§ 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.

(July 26, 1947, ch. 343, title VI, § 605, as added Pub. L. 97–200, § 2(a), June 23, 1982, 96 Stat. 123.)

§ 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.

(July 26, 1947, ch. 343, title VI, § 606, as added Pub. L. 97–200, § 2(a), June 23, 1982, 96 Stat. 123; amended Pub. L. 106–120, title III, § 304(a), Dec. 3, 1999, 113 Stat. 1611.)

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 Directorate of Operations 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;

(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) Supersedure 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 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; 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.

(July 26, 1947, ch. 343, title VII, § 701, as added Pub. L. 98–477, § 2(a), Oct. 15, 1984, 98 Stat. 2209; amended Pub. L. 104–93, title VII, § 702, Jan. 6, 1996, 109 Stat. 978; Pub. L. 107–306, title III, § 353(b)(10), Nov. 27, 2002, 116 Stat. 2402; Pub. L. 108–136, div. A, title IX, § 922(b)(1), (2)(B)–(F), (d)(1)(B), Nov. 24, 2003, 117 Stat. 1573, 1574; Pub. L. 108–458, title I, §§ 1071(a)(6), 1072(a)(7), Dec. 17, 2004, 118 Stat. 3690, 3692.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (f)(5), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

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

2004—Subsec. (a). Pub. L. 108–458, § 1071(a)(6)(A), substituted ''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'' for ''Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence''.

Subsec. (c)(3). Pub. L. 108–458, § 1072(a)(7), substituted ''Office of the Director of National Intelligence'' for ''Office of the Director of Central Intelligence''.

Subsec. (g)(1). Pub. L. 108–458, § 1071(a)(6)(B), substituted ''Director of the Central Intelligence Agency and the Director of National Intelligence'' for ''Director of Central Intelligence''.

2003—Pub. L. 108–136, § 922(d)(1)(B), substituted ''Operational files of the Central Intelligence Agency'' for ''Exemption of certain operational files from search, review, publication, or disclosure'' in section catchline.

Subsec. (b). Pub. L. 108–136, § 922(b)(1), which directed the substitution of ''In 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.

Subsec. (g). Pub. L. 108–136, § 922(b)(2)(C), inserted heading.

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.''

Pub. L. 108–136, § 922(b)(2)(F)(i), substituted ''with this subsection'' for ''with this section'' in first sentence.

2002—Subsec. (c)(3). Pub. L. 107–306 substituted ''congressional intelligence committees'' for ''intelligence committees of the Congress''.

1996—Subsec. (b)(3). Pub. L. 104–93 substituted ''Office of Personnel Security'' for ''Office of Security''.

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; Transition Provisions note under section 401 of this title.

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 General Counsel of NGA.

(v) The Office of the Director of NGA.

(vi) The Office of the Inspector General of the National Geospatial-Intelligence Agency.

(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 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 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 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)(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 paragraph 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.

(viii) 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.

(July 26, 1947, ch. 343, title VII, §702, formerly title I, §105B, as added Pub. L. 106–120, title V, §501(a)(1), Dec. 3, 1999, 113 Stat. 1616; renumbered §105C, Pub. L. 107–56, title IX, §905(a)(1), Oct. 26, 2001, 115 Stat. 388; amended Pub. L. 107–306, title III, §353(b)(5), Nov. 27, 2002, 116 Stat. 2402; renumbered title VII, §702, and amended Pub. L. 108–136, div. A, title IX, §§921(e)(4), 922(c), (d)(1)(C), Nov. 24, 2003, 117 Stat. 1569, 1573, 1574; Pub. L. 108–375, div. A, title X, §1084(j), Oct. 28, 2004, 118 Stat. 2064; Pub. L. 108–458, title I, §1071(a)(1)(DD)–(FF), Dec. 17, 2004, 118 Stat. 3689; Pub. L. 109–163, div. A, title IX, §933(b)(1), Jan. 6, 2006, 119 Stat. 3416.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a)(6)(B)(v), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Section was formerly classified to section 403–5c 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

A prior section 432, act July 26, 1947, ch. 343, title VII, §702, as added Pub. L. 98–477, §2(a), Oct. 15, 1984, 98 Stat.

2211; amended Pub. L. 108–136, div. A, title IX, § 922(b)(2)(A), Nov. 24, 2003, 117 Stat. 1573, was transferred to section 431 of this title and redesignated as subsec. (g) by Pub. L. 108–136, div. A, title IX, § 922(b)(2)(B), Nov. 24, 2003, 117 Stat. 1573.

AMENDMENTS

2006—Subsec. (a)(3)(C)(vi). Pub. L. 109–163 added cl. (vi).

2004—Subsec. (a)(1). Pub. L. 108–458, § 1071(a)(1)(DD), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (a)(6)(B)(iv)(I). Pub. L. 108–375 substituted ''responsive records'' for ''responsible records''.

Subsec. (a)(6)(B)(viii). Pub. L. 108–458, § 1071(a)(1)(EE), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (b)(1). Pub. L. 108–458, § 1071(a)(1)(FF), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in two places.

2003—Pub. L. 108–136, § 922(d)(1)(C), amended section catchline generally, substituting ''Operational files of the National Geospatial-Intelligence Agency'' for ''Protection of operational files of the National Imagery and Mapping Agency''.

Subsec. (a)(1). Pub. L. 108–136, § 921(e)(4)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' in two places.

Subsec. (a)(2)(A). Pub. L. 108–136, § 921(e)(4)(A), (B), substituted ''NGA'' for ''NIMA'' wherever appearing and substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Subsec. (a)(3)(C)(iv), (v), (6)(A), (B)(i), (iv)(I). Pub. L. 108–136, § 921(e)(4)(B), substituted ''NGA'' for ''NIMA''.

Subsec. (a)(6)(B)(iv)(II). Pub. L. 108–136, § 921(e)(4)(B), (C), substituted ''NGA'' for ''NIMA'' and ''NGA's'' for ''NIMA's''.

Subsec. (a)(6)(B)(vi), (vii). Pub. L. 108–136, § 921(e)(4)(B), substituted ''NGA'' for ''NIMA'' wherever appearing.

Subsec. (b)(1). Pub. L. 108–136, § 921(e)(4)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Subsec. (b)(3). Pub. L. 108–136, § 921(e)(4)(B), substituted ''NGA'' for ''NIMA'' wherever appearing.

2002—Subsec. (a)(3)(C). Pub. L. 107–306 added cl. (i), redesignated cls. (iii) to (vi) as (ii) 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.

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; Transition Provisions note under section 401 of this title.

TREATMENT OF CERTAIN TRANSFERRED RECORDS

Pub. L. 106–120, title V, § 501(b), Dec. 3, 1999, 113 Stat. 1619, as amended by Pub. L. 108–136, div. A, title IX, § 921(g), Nov. 24, 2003, 117 Stat. 1570, provided that: ''Any record transferred to the National Geospatial-Intelligence Agency from exempted operational files of the Central Intelligence Agency covered by section 701(a) of the National Security Act of 1947 (50 U.S.C. 431(a)) shall be placed in the operational files of the National Geospatial-Intelligence Agency that are established pursuant to section 105B [now 702] of the National Security Act of 1947 [50 U.S.C. 432], as added by subsection (a).''

§ 432a. Operational files of the National Reconnaissance Office

(a) Exemption of certain operational files from search, review, publication, or disclosure

(1) 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)(A) 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) 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 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)(I) 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 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 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.

(viii) 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 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.

(July 26, 1947, ch. 343, title VII, §703, formerly title I, §105D, as added Pub. L. 107–306, title V, §502(a), Nov. 27, 2002, 116 Stat. 2405; renumbered title VII, §703, and amended Pub. L. 108–136, div. A, title IX, §922(c), (d)(1)(D), Nov. 24, 2003, 117 Stat. 1573, 1574; Pub. L. 108–375, div. A, title X, §1084(j), Oct. 28, 2004, 118 Stat. 2064; Pub. L. 108–458, title I, §1071(a)(1)(GG)–(II), Dec. 17, 2004, 118 Stat. 3689; Pub. L. 109–163, div. A, title IX, §933(b)(2), Jan. 6, 2006, 119 Stat. 3416.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a)(6)(B)(v), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Section was formerly classified to section 403–5e of this title prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2006—Subsec. (a)(3)(C)(vii). Pub. L. 109–163 added cl. (vii).

2004—Subsec. (a)(1). Pub. L. 108–458, §1071(a)(1)(GG), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (a)(6)(B)(iv)(I). Pub. L. 108–375 substituted ''responsive records'' for ''responsible records''.

Subsec. (a)(6)(B)(viii). Pub. L. 108–458, §1071(a)(1)(HH), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (b)(1). Pub. L. 108–458, §1071(a)(1)(II), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in two places.

2003—Pub. L. 108–136 substituted ''Operational files of the National Reconnaissance Office'' for ''Protection of operational files of the National Reconnaissance Office'' in section catchline.

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; Transition Provisions 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.

(F) The Office of the Inspector General of the Department of Defense.

(G) The Office of the Director of the National Security Agency.

(H) The Office of the Inspector General 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 be-

cause 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.

(July 26, 1947, ch. 343, title VII, §704, as added Pub. L. 108–136, div. A, title IX, §922(a), Nov. 24, 2003, 117 Stat. 1570; amended Pub. L. 108–375, div. A, title X, §1084(j), Oct. 28, 2004, 118 Stat. 2064; Pub. L. 108–458, title I, §1071(a)(1)(JJ)–(LL), Dec. 17, 2004, 118 Stat. 3689; Pub. L. 109–163, div. A, title IX, §933(b)(3), Jan. 6, 2006, 119 Stat. 3416.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (f)(2)(E), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2006—Subsec. (c)(3)(H). Pub. L. 109–163 added subpar. (H).

2004—Subsec. (a). Pub. L. 108–458, §1071(a)(1)(JJ), which directed amendment of par. (1) of subsec. (a) by substituting ''Director of National Intelligence'' for ''Director of Central Intelligence'', was executed to text of subsec. (a), which does not contain any pars., to reflect the probable intent of Congress.

Subsec. (f)(2)(D)(i). Pub. L. 108–375 substituted ''responsive records'' for ''responsible records''.

Subsec. (f)(2)(H). Pub. L. 108–458, §1071(a)(1)(KK), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (g)(1). Pub. L. 108–458, §1071(a)(1)(LL), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence'' in two places.

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; Transition Provisions note under section 401 of this title.

§ 432c. Omitted

Section, July 26, 1947, ch. 343, title VII, §705, as added Pub. L. 109–163, div. A, title IX, §933(a)(1), Jan. 6, 2006, 119 Stat. 3413, which provided that the Director of the Defense Intelligence Agency could exempt operational files of the Defense Intelligence Agency from provisions of section 552 of title 5, defined ''operational files'', authorized certain searches of exempted files and of information from exempted files, provided for judicial review of withholding of records and for decennial review of exempted files, ceased to be effective on Dec. 31, 2007, pursuant to subsec. (g) of section.

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.

(July 26, 1947, ch. 343, title VIII, § 801, as added Pub. L. 103–359, title VIII, § 802(a), Oct. 14, 1994, 108 Stat. 3435; amended Pub. L. 106–120, title III, § 305(a), Dec. 3, 1999, 113 Stat. 1611; Pub. L. 107–306, title III, § 353(b)(2)(B), Nov. 27, 2002, 116 Stat. 2402.)

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''.

1999—Subsec. (a)(3). Pub. L. 106–120 substituted ''travel records, and computers used in the performance of Government duties'' for ''and travel records''.

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].''

DECLASSIFICATION OF INFORMATION

Pub. L. 106–567, title VII, Dec. 27, 2000, 114 Stat. 2856, as amended by Pub. L. 108–458, title I, § 1102, Dec. 17, 2004, 118 Stat. 3699; Pub. L. 110–53, title VI, § 602, Aug. 3, 2007, 121 Stat. 335, provided that:

''SEC. 701. SHORT TITLE.

''This title may be cited as the 'Public Interest Declassification Act of 2000'.

''SEC. 702. FINDINGS.

''Congress makes the following findings:

''(1) It is in the national interest to establish an effective, coordinated, and cost-effective means by which records on specific subjects of extraordinary public interest that do not undermine the national security interests of the United States may be collected, retained, reviewed, and disseminated to Congress, policymakers in the executive branch, and the public.

''(2) Ensuring, through such measures, public access to information that does not require continued protection to maintain the national security interests of the United States is a key to striking the balance between secrecy essential to national security and the openness that is central to the proper functioning of the political institutions of the United States.

''SEC. 703. PUBLIC INTEREST DECLASSIFICATION BOARD.

''(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' (in this title 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 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 (including donated historical 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 deriving 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, to declassify 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 preeminent 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, of 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)(A) Of the members initially appointed to the Board by the President—

''(i) three shall be appointed for a term of 4 years;

''(ii) one shall be appointed for a term of 3 years; and

''(iii) one shall be appointed for a term of 2 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 3 years.

''(C) The members initially appointed to the Board by the minority leader of the House of Representatives or the Senate shall be appointed for a term of 2 years.

''(D) Any subsequent appointment to the Board shall be for a term of 3 years.

''(3) A vacancy in the Board shall be filled in the same manner as the original appointment. A member of the Board appointed to fill a vacancy before the expiration of a 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)(A) The President shall designate one of the members of the Board as the Chairperson of the Board.

''(B) The term of service as Chairperson of the Board shall be 2 years.

''(C) 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 6 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 privilege.

''(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 members of 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.

''(*l*) 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 450j 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.

''(2)(A) The annual briefing and report under paragraph (1) for agencies within the Department of Defense, including the military departments and the elements of the intelligence community, shall be provided on a consolidated basis.

''(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 declinations to declassify 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 all 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 103(c)(6) of the National Security Act of 1947 ([former] 50 U.S.C. 403–3(c)(6)).

''(d) EXEMPTIONS TO RELEASE OF INFORMATION.—Nothing in this title shall be construed to limit any exemption or exception to the release to the public 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 information 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, 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 Oversight 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 the 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.

''(f) NOTIFICATION OF REVIEW.—In response to a specific congressional request for declassification review described in section 703(b)(5), the Board shall advise the originators of the request in a timely manner whether the Board intends to conduct such review.

''SEC. 707. JUDICIAL REVIEW.

''Nothing in this title limits the protection afforded to any information under any other provision of law. This title is not intended and may not be construed to create any right or benefit, substantive or procedural, enforceable against the United States, its agencies, its officers, or its employees. This title does not modify in any way the substantive criteria or procedures for the classification of information, nor does this title create any right or benefit subject to judicial review.

''SEC. 708. FUNDING.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to carry out the provisions of this title amounts as follows:

''(1) For fiscal year 2001, $650,000.

''(2) For each fiscal year after fiscal year 2001, such sums as may be necessary for such fiscal year.

''(b) FUNDING REQUESTS.—The President shall include in the budget submitted to Congress for each fiscal year under section 1105 of title 31, United States Code, a request for amounts for the activities of the Board under this title during such fiscal year.

''SEC. 709. DEFINITIONS.

''In this title:

''(1) AGENCY.—(A) Except as provided in subparagraph (B), the term 'agency' means the following:

''(i) An Executive agency, as that term is defined in section 105 of title 5, United States Code.

''(ii) A military department, as that term is defined in section 102 of such title.

''(iii) Any other entity in the executive branch that comes into the possession of classified information.

''(B) The term does not include the Board.

''(2) CLASSIFIED MATERIAL OR RECORD.—The terms 'classified material' and 'classified record' include any correspondence, memorandum, book, plan, map,

drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable records, and other documentary material, regardless of physical form or characteristics, that has been determined pursuant to Executive order to require protection against unauthorized disclosure in the interests of the national security of the United States.

''(3) DECLASSIFICATION.—The term 'declassification' means the process by which records or materials that have been classified are determined no longer to require protection from unauthorized disclosure to protect the national security of the United States.

''(4) DONATED HISTORICAL MATERIAL.—The term 'donated historical material' means collections of personal papers donated or given to a Federal Presidential library or other archival repository under a deed of gift or otherwise.

''(5) FEDERAL PRESIDENTIAL LIBRARY.—The term 'Federal Presidential library' means a library operated and maintained by the United States Government through the National Archives and Records Administration under the applicable provisions of the Federal Records Act of 1950 [see References in Text note under section 450j of Title 25, Indians].

''(6) NATIONAL SECURITY.—The term 'national security' means the national defense or foreign relations of the United States.

''(7) RECORDS OR MATERIALS OF EXTRAORDINARY PUBLIC INTEREST.—The term 'records or materials of extraordinary public interest' means records or materials that—

''(A) demonstrate and record the national security policies, actions, and decisions of the United States, including—

''(i) policies, events, actions, and decisions which led to significant national security outcomes; and

''(ii) 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 'records 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.

''SEC. 710. EFFECTIVE DATE; SUNSET.

''(a) 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.''

COMPILATION AND ORGANIZATION OF PREVIOUSLY DECLASSIFIED RECORDS

Pub. L. 106–398, § 1 [[div. A], title X, § 1075(c), (d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–280, provided that:

''(c) COMPILATION AND ORGANIZATION 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 Executive order to conduct a declassification review on a specified set of agency records.

''(3) An order from the President or an official with delegated authority from the President to conduct a declassification review on a specified set of agency records.''

CERTIFICATION AND REPORT RELATED TO AUTOMATIC DECLASSIFICATION OF DEPARTMENT OF DEFENSE RECORDS

Pub. L. 106–65, div. A, title X, § 1041(c), (d), Oct. 5, 1999, 113 Stat. 758, provided that:

''(c) CERTIFICATION REQUIRED WITH RESPECT TO AUTOMATIC DECLASSIFICATION OF RECORDS.—No records of the Department of Defense that have not been reviewed for declassification shall be subject to automatic declassification unless the Secretary of Defense certifies to Congress that such declassification would not harm the national security.

''(d) REPORT ON AUTOMATIC DECLASSIFICATION OF DEPARTMENT OF DEFENSE RECORDS.—Not later than February 1, 2001, 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 on the efforts of the Department of Defense relating to the declassification of classified records under the control of the Department of Defense. 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 cost of reviewing records to meet any requirement to review all relevant records for declassification by a date established for automatic declassification.

''(3) 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 affect [sic] 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.''

SUPPLEMENT TO PLAN FOR DECLASSIFICATION OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA

Pub. L. 106–65, div. C, title XXXI, § 3149, Oct. 5, 1999, 113 Stat. 938, which was formerly set out as a note under this section, was renumbered section 4523 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(13)(A)–(C), Nov. 24, 2003, 117 Stat. 1775, and is classified to section 2673 of this title.

IDENTIFICATION IN BUDGET MATERIALS OF AMOUNTS FOR DECLASSIFICATION ACTIVITIES AND LIMITATION ON EXPENDITURES FOR SUCH ACTIVITIES

Pub. L. 106–65, div. C, title XXXI, § 3173, Oct. 5, 1999, 113 Stat. 949, which was formerly set out as a note under this section, was renumbered section 4525 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(15)(A)–(C), Nov. 24, 2003, 117 Stat. 1775, and is classified to section 2675 of this title.

PROTECTION AGAINST INADVERTENT RELEASE OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA

Pub. L. 105–261, div. C, title XXXI, § 3161, Oct. 17, 1998, 112 Stat. 2259, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3193(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–480, which was formerly set out as a note under this section, was renumbered section 4522 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(12)(A)–(C), Nov. 24, 2003, 117 Stat. 1774, and is classified to section 2672 of this title.

SECRECY AGREEMENTS USED IN INTELLIGENCE ACTIVITIES

Pub. L. 104–93, title III, § 306, Jan. 6, 1996, 109 Stat. 966, provided that: ''Notwithstanding any other provision of

law not specifically referencing this section, a nondisclosure 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, § 402, 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 50 annuitants who served without compensation as volunteers in aid of the review for 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. 102–526 (44 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:

''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 purpose 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.

''(c) CHAIRMAN.—The Commission shall elect a Chairman from among its members.

''(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the Chairman or a majority of its members. Seven members of the Commission shall constitute a quorum. 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.

''(e) APPOINTMENT OF MEMBERS; INITIAL MEETING.—(1) It is the sense of the Congress that members of the Commission should be appointed not later than 60 days after the date of enactment of this title [Apr. 30, 1994].

''(2) 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 any 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.

''(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

''(f) 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 IV 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 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.

''(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 homes 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 5703(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

Pub. L. 103–160, div. A, title XI, § 1152, Nov. 30, 1993, 107 Stat. 1758, as amended by Pub. L. 106–65, div. C, title XXXII, § 3294(e)(2), Oct. 5, 1999, 113 Stat. 970, provided that:

''(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 a 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.

''(e) 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 12356 [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 or 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

Pub. L. 102–190, div. A, title X, §1082, Dec. 5, 1991, 105 Stat. 1480, as amended by Pub. L. 103–337, div. A, title X, §1036, Oct. 5, 1994, 108 Stat. 2841; Pub. L. 104–106, div. A, title X, §1085, Feb. 10, 1996, 110 Stat. 457, provided that:

''(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 not 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 requirements 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 552a 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 deter-

mined 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/MIAs.

''(B) Paragraph (2) does not apply to the access of an adult member of the family of a person to any record or 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 records 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 or the Cold War, 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 PRISONER, 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 into 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. 10501

Ex. Ord. No. 10501, Nov. 5, 1953, 18 F.R. 7049, as amended by Ex. Ord. No. 10816, May 7, 1959, 24 F.R. 3777; Ex. Ord. No. 10901, Jan. 9, 1961, 26 F.R. 217; Ex. Ord. No. 10964, Sept. 20, 1961, 26 F.R. 8932; Ex. Ord. No. 10985, Jan. 12, 1962, 27 F.R. 439; Ex. Ord. No. 11097, Feb. 28, 1963, 28 F.R. 2225; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, which related to safeguarding official information, was superseded by Ex. Ord. No. 11652, Mar. 8, 1972, 37 F.R. 5209, formerly set out below.

EX. ORD. NO. 10865. SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

Ex. Ord. No. 10865, Feb. 20, 1960, 25 F.R. 1583, as amended by Ex. Ord. No. 10909, Jan. 17, 1961, 26 F.R. 508; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12829, § 203(g), Jan. 6, 1993, 58 F.R. 3479; Ex. Ord. No. 13284, § 15, Jan. 23, 2003, 68 F.R. 4076, provided:

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 encroachment; 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:

SECTION 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].

SEC. 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 offi-

cials 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.

SEC. 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.

(7) 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 8 of this order, found for or against him with respect to each allegation in the statement of reasons.

SEC. 4. (a) An applicant shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to 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 or such special designee has determined that failure to receive and consider such statement would, in view of the level of access sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (A) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (B) due to some other cause determined by the head of the department to be good and sufficient.

(b) Whenever procedures under paragraphs (1) or (2) of subsection (a) 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.

SEC. 5. (a) Records compiled in the regular course of business, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that such information has been furnished to the department concerned by an investigative agency pursuant to its responsibilities in connection with assisting the head of the department concerned to safeguard classified information within industry pursuant to this order.

(b) Records compiled in the regular course of business, or other physical evidence other than investigative 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.

SEC. 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, or 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.

SEC. 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.

SEC. 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.

SEC. 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

Ex. Ord. No. 10865, Feb. 20, 1960, 25 F.R. 1583, as amended, set out above, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out under section 7151 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 10985

Ex. Ord. No. 10985, 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. 11652, Mar. 8, 1972, 37 F.R. 5209, formerly set out below.

EXECUTIVE ORDER NO. 11097

Ex. Ord. No. 11097, Feb. 28, 1963, 28 F.R. 2225, which amended Executive Order No. 10501, which related to safeguarding official information, was superseded by Ex. Ord. No. 11652, Mar. 8, 1972, 37 F.R. 5209, formerly set out below.

EXECUTIVE ORDER NO. 11652

Ex. Ord. No. 11652, Mar. 8, 1972, 37 F.R. 5209, as amended by Ex. Ord. No. 11714, Apr. 24, 1973, 38 F.R. 10245; Ex. Ord. No. 11862, June 11, 1975, 40 F.R. 25197; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which related to the classification and declassification of national security information and material, was revoked by Ex. Ord. No. 12065, June 28, 1978, 43 F.R. 28949, formerly set out below.

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 requires 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. 871; 42 U.S.C. 6272(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

Ex. Ord. No. 12065, June 28, 1978, 43 F.R. 28949, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, which related to classification and declassification of national security information and material, was revoked by Ex. Ord. No. 12356, Apr. 2, 1982, 47 F.R. 14874, 15557, formerly set out below.

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

Ex. Ord. No. 12829, Jan. 6, 1993, 58 F.R. 3479, as amended by Ex. Ord. No. 12885, Dec. 14, 1993, 58 F.R. 65863, provided:

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 promote our national interests, the United States Government issues contracts, licenses, and grants to nongovernment 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 industrial security program 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. 2011–2286) [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 1. 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.

SEC. 102. *Policy Direction.* (a) The National Security Council shall provide overall policy direction for the National Industrial Security Program.

(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 and shall:

(1) develop, in consultation with the agencies, and promulgate subject to the approval of the National Security Council, directives for the implementation of this order, which shall be binding on the agencies;

(2) oversee agency, contractor, licensee, and grantee actions to ensure compliance with this order and implementing directives;

(3) review all agency implementing regulations, internal rules, or guidelines. The Director shall require any regulation, rule, or guideline to be changed if it is not consistent with this order or implementing directives. Any such decision by the Director may be appealed to the National Security Council. The agency regulation, rule, or guideline shall remain in effect pending a prompt decision on the appeal;

(4) have the authority, pursuant to terms of applicable contracts, licenses, grants, or regulations, to conduct on-site reviews of the implementation of the National Industrial Security Program by each agency, contractor, licensee, and grantee that has access to or stores classified information and to require of each agency, contractor, licensee, and grantee those reports, information, and other cooperation that may be necessary to fulfill the Director's responsibilities. If these reports, inspections, or access to specific classified information, or other forms of cooperation, would pose an exceptional national security risk, the affected agency head or the senior official designated under section 203(a) of this order may request the National Security Council to deny access to the Director. The Director shall not have access pending a prompt decision by the National Security Council;

(5) report any violations of this order or its implementing directives to the head of the agency or to the senior official designated under section 203(a) of this order so that corrective action, if appropriate, may be taken. Any such report pertaining to the implementation of the National Industrial Security Program by a contractor, licensee, or grantee shall be directed to the agency that is exercising operational oversight over the contractor, licensee, or grantee under section 202 of this order;

(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the National Industrial Security Program;

(7) consider, in consultation with the advisory committee established by this order, affected agencies, contractors, licensees, and grantees, and recommend to the President through the National Security Council changes to this order; and

(8) report at least annually to the President through the National Security Council on the implementation of the National Industrial Security Program.

(c) Nothing in this order shall be construed to supersede the authority 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.*], or the authority of the Director of Central Intelligence under the National Security Act of 1947, as amended [see Short Title note set out under section 401 of this title], or Executive Order No. 12333 of December 8, 1981 [50 U.S.C. 401 note].

SEC. 103. *National Industrial Security Program Policy Advisory Committee.* (a) *Establishment.* There is established the National Industrial Security Program Policy Advisory Committee (''Committee''). The Director of the Information Security Oversight Office shall serve as Chairman of the Committee and appoint the members of the Committee. The members of the Committee shall be the representatives of those departments and agencies most affected by the National Industrial Security Program and nongovernment representatives of contractors, licensees, or grantees involved with classified contracts, licenses, or grants, as determined by the Chairman.

(b) *Functions.* (1) The Committee members shall advise the Chairman of the Committee on all matters concerning the policies of the National Industrial Security Program, including recommended changes to those 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.

(2) The Committee shall meet at the request of the Chairman, but at least twice during the calendar year.

(c) *Administration.* (1) 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.

PART 2. OPERATIONS

SEC. 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.

SEC. 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 monitcr [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.

SEC. 203. *Implementation.* (a) The head of each agency that enters into classified contracts, licenses, or grants shall designate a senior agency official to direct and administer the agency's implementation and compliance with 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 take appropriate and 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 contractors, licensees, or grantees specified by this order shall be carried out pursuant to the terms of a contract, license, grant, or regulation.

(g) Executive Order No. 10865 of February 20, 1960 [set out above], as amended by Executive Order No. 10909 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 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 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.''

(h) 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. 11382 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.

SEC. 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.

SEC. 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.
	B.	RG 65, Federal Bureau of Investigation	362,500 pp.
	C.	RG 127, United States Marine Corps	195,000 pp.
	D.	RG 216, Office of Censorship	112,500 pp.
	E.	RG 226, Office of Strategic Services	415,000 pp.
	F.	RG 60, United States Occupation Headquarters	4,422,500 pp.
	G.	RG 331, Allied Operational and Occupation Headquarters, World War II (including 350 reels of Allied Force Headquarters)	3,097,500 pp.
	H.	RG 332, United States Theaters of War, World War II	1,182,500 pp.
	I.	RG 338, Mediterranean Theater of Operations and European Command	9,500,000 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-1950 General Correspondence (selected records)	1,732,500 pp.
	B.	RG 51, Bureau of the Budget, 52.12 Budget Preparation Branch, 1952–69	142,500 pp.
	C.	RG 72, Bureau of Aeronautics (Navy) (selected records)	5,655,000 pp.
	D.	RG 166, Foreign Agricultural Service, Narrative Reports, 1955–61	1,272,500 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 428, 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. Upon transfer, such imagery shall be deemed declassified and shall be made available to the public.

SEC. 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.

SEC. 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.

SEC. 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. 12958

Ex. Ord. No. 12958, Apr. 17, 1995, 60 F.R. 19825, as amended by Ex. Ord. No. 12972, Sept. 18, 1995, 60 F.R. 48863; Ex. Ord. No. 13142, Nov. 19, 1999, 64 F.R. 66089; Ex. Ord. No. 13292, Mar. 25, 2003, 68 F.R. 15315, which related to classified national security information, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731, set out below.

EX. ORD. NO. 12968. ACCESS TO CLASSIFIED INFORMATION

Ex. Ord. No. 12968, Aug. 2, 1995, 60 F.R. 40245, 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 1.1. *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. 12951 [set out above], or any successor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011 [*et seq.*]), 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.

SEC. 1.2. *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(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401[(6)]);

(B) consumer reports pertaining to the employee under the Fair Credit Reporting Act (15 U.S.C. 1681a [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 investigating 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) the 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(f) of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2165(f)]).

(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, international 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 and 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.

SEC. 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.

SEC. 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 made 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.

SEC. 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.

SEC. 2.5. *Specific Access Requirement.* (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 information.

(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.

SEC. 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 lawful 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

SEC. 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 clas-

sified 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.

SEC. 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 the investigative requirements set forth in this order and its implementing regulations to resolve issues that may arise during the course of a background investigation or reinvestigation.

SEC. 3.3. *Special Circumstances.* (a) In exceptional circumstances where official functions must be performed prior to the completion of the investigative and adjudication process, 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 individual for the last background investigation, and an appropriate record check reveals no unfavorable information.

SEC. 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.

SEC. 3.5. *Continuous Evaluation.* 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 frequency of such evaluation) as determined by the Director of National Intelligence.

PART 4—INVESTIGATIONS FOR FOREIGN GOVERNMENTS

SEC. 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

SEC. 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.

SEC. 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 adjudicative 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 interests of the United States by revealing classified information, 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

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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

SEC. 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.).

SEC. 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. 10450 [5 U.S.C. 7311 note], the denial and revocation procedures provided to individuals covered by Executive Order No. 10865, as amended [set out above], or access by historical researchers and former presidential appointees under Executive Order No. 12958 [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.

EX. ORD. NO. 13467. REFORMING PROCESSES RELATED TO SUITABILITY FOR GOVERNMENT EMPLOYMENT, FITNESS FOR CONTRACTOR EMPLOYEES, AND ELIGIBILITY FOR ACCESS TO CLASSIFIED NATIONAL SECURITY INFORMATION

Ex. Ord. No. 13467, June 30, 2008, 73 F.R. 38103, 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 ensure an efficient, practical, reciprocal, and aligned system for investigating and determining suitability for Government employment, contractor employee fitness, and 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 to hold a sensitive position, access to federally controlled facilities and information systems, and eligibility for access to classified information shall be aligned 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 in a background investigation, as well as any other 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 comes into 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 12958 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 105 or 107 of title 3, United States Code; or

(ii) the Vice President or (except to the extent otherwise directed by the Vice President) employees of the Vice President under section 106 of title 3 or annual legislative branch appropriations acts.

(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 10450 of April 27, 1953, 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 adjudica-

tion 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, protecting 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 align their respective 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 the Office 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.

SEC. 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 Suit-

ability 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

SEC. 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 10577 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; nor

(ii) diminish or otherwise affect the denial and revocation procedures provided to individuals covered by Executive Order 10865 of February 20, 1960, 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 their Government. Also, our Nation's progress depends on the free flow of information both within the Government and to the American people. Nevertheless, throughout our history, the national defense has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, our homeland security, and our interactions with foreign nations. Protecting information critical to our Nation's security and demonstrating our commitment to open Government through accurate and accountable application of classification standards and routine, secure, and effective declassification are equally important priorities.

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) an original classification authority is classifying the information;

(2) the information is owned by, produced by or for, or is under the control of the United States Government;

(3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and

(4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

(b) If there is significant doubt about the need to classify information, it shall not be classified. 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.

(c) Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

(d) The unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

SEC. 1.2. *Classification Levels*. (a) Information may be classified at one of the following three levels:

(1) ''Top Secret'' shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) ''Secret'' shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(3) ''Confidential'' shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information.

(c) If there is significant doubt about the appropriate level of classification, it shall be classified at the lower level.

SEC. 1.3. *Classification Authority*. (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, or 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, or the senior agency official designated under section 5.4(d) of this order, provided that official has been delegated ''Top Secret'' original classification authority by the agency head.

(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 to the Director of the Information Security Oversight Office.

(d) All original classification authorities must receive training in proper classification (including the avoidance of over-classification) and declassification as provided in this order and its implementing directives at least once a calendar year. Such training must include instruction on the proper safeguarding of classified 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 calendar year shall have their classification authority suspended 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 authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this order and its implementing directives. The information shall be transmitted promptly as provided under this order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within 30 days whether to classify this information.

SEC. 1.4. *Classification Categories*. Information shall not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security in accordance with section 1.2 of this order, and it pertains 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 cryptology;

(d) foreign relations or foreign activities of the United States, including confidential sources;

(e) scientific, technological, or economic matters relating to the national security;

(f) United States Government programs for safeguarding nuclear materials or facilities;

(g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or (h) the development, production, or use of weapons of mass destruction.

SEC. 1.5. *Duration of Classification*. (a) At the time of original classification, the original classification authority shall establish a specific date or event for declassification based on the duration of the national security sensitivity of the information. Upon reaching the date or event, the information shall be automatically declassified. Except for 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, the date or event shall not exceed the time frame established in paragraph (b) of this section.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires that it be marked for declassification for up to 25 years from the date of the original decision.

(c) An original classification authority may extend the duration of classification up to 25 years from the date of origin of the document, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under this order are followed.

(d) No information may remain classified indefinitely. Information marked for an indefinite duration of classification under predecessor orders, for example, marked as ''Originating Agency's Determination Required,'' or classified information that contains incomplete declassification instructions or lacks declassification instructions shall be declassified in accordance with part 3 of this order.

SEC. 1.6. *Identification and Markings*. (a) At the time of original classification, the following shall be indicated in a manner that is immediately apparent:

(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 prescribed in section 1.5(a);

(B) the date that is 10 years from the date of original 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 1.5(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 intelligence source or key design concepts of weapons of mass destruction, the marking prescribed in implementing directives issued pursuant to this order; and

(5) a concise reason for classification that, at a minimum, 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 additional 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 portions are unclassified. In accordance with standards prescribed in directives issued under this order, the Director of the Information Security Oversight Office may grant and revoke temporary waivers of this requirement. The Director shall revoke any waiver upon a finding of abuse.

(d) Markings or other indicia implementing the provisions of this order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing 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 information retaining its original classification markings need not be assigned a U.S. classification marking provided 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 practicable, 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 declassification.

SEC. 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 administrative 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 national security.

(b) Basic scientific research information not clearly related to the national security shall not be classified.

(c) Information may not be reclassified after declassification and release to the public under proper authority unless:

(1) the reclassification is personally approved in writing by the agency head based on a document-by-document 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 (National Archives) that have been available for public use, the agency head has, after making the determinations required by this paragraph, notified the Archivist of the United States (Archivist), who shall suspend public access pending approval of the reclassification action by the Director of the Information Security Oversight 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 remain suspended pending a prompt decision on the appeal.

(d) Information that has not previously been disclosed 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-document 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 authority in accordance with section 1.5 of this order.

(e) Compilations of items of information that are individually unclassified may be classified if the compiled 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.

SEC. 1.8. *Classification Challenges.* (a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information in accordance with agency procedures established under paragraph (b) of this section.

(b) In accordance with implementing directives issued 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 information that they believe is improperly classified or unclassified. 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 impartial official or panel; and

(3) individuals are advised of their right to appeal agency decisions to the Interagency Security Classification Appeals Panel (Panel) established by section 5.3 of this order.

(c) Documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement are not covered by this section.

SEC. 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 identify classified information that no longer requires protection and can be declassified. The initial fundamental classification guidance review shall be completed 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 assessment 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

SEC. 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 authority.

(b) Persons who apply derivative classification markings 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 decisions; and

(3) carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple sources, the derivative classifier shall carry forward:

(A) the date or event for declassification that corresponds 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 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.

(d) Persons who apply derivative classification markings 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 classification 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 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.

SEC. 2.2. *Classification Guides.* (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. 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(j) 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

SEC. 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 declassification 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 the 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.

SEC. 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 when necessary 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.

SEC. 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;

(2) reveal information that would assist in the development, production, or use of weapons of mass destruction;

(3) reveal information that would impair U.S. cryptologic systems or activities;

(4) reveal information that would impair the application of state-of-the-art technology within a U.S. weapon system;

(5) 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;

(6) 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;

(7) reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;

(8) reveal information that would seriously impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, or infrastructures relating to the national security; or

(9) violate a statute, treaty, or international agreement that does not permit the automatic or unilateral declassification of information 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 almost invariably identifies a 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 within 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, 2010, or December 31 of the year that is 10 years from the date of previous approval.

(d) 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 may 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.

(j) 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 General Records Schedule, although the duration of classification shall be extended if the record has been retained for business reasons beyond the scheduled disposition date.

SEC. 3.4. *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.

SEC. 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 or the incumbent Vice President's Staff; committees, commissions, or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President is exempted from the provisions of paragraph (a) of this section. However, the Archivist shall have the authority to review, downgrade, and declassify papers or records of former Presidents and Vice Presidents under the control of the Archivist pursuant to 44 U.S.C. 2107, 2111, 2111 note, or 2203. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Panel. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification under this order. They shall release this information unless withholding is otherwise authorized and warranted under applicable law.

(d) If an agency has reviewed the requested information for declassification within the past 2 years, the agency need not conduct another review and may instead inform the requester of this fact and the prior review decision and advise the requester of appeal rights provided under subsection (e) of this section.

(e) In accordance with directives issued pursuant to this order, agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They also shall provide a means for administratively appealing a denial of a mandatory review request, and for notifying the requester of the right to appeal a final agency decision to the Panel.

(f) After consultation with affected agencies, the Secretary of Defense shall develop special procedures for

the review of cryptologic information; the Director of National Intelligence shall develop special procedures for the review of information pertaining to intelligence sources, methods, and activities; and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.

(g) Documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement are not covered by this section.

(h) This section shall not apply to any request for a review made to an element of the Intelligence Community that is 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.

SEC. 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 disclosure 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 requester 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.

SEC. 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 databases and the use of new technologies to document and make public declassification review decisions and support declassification activities under the purview of the Center; and

(7) 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 and the likelihood of declassification.

(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

SEC. 4.1. *General Restrictions on Access.*

(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 and 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.

(2) Classified information originating in one agency may be disseminated by any other agency to which it has been made available to a foreign government in accordance with statute, this order, directives implementing this order, direction of the President, or with the consent of the originating agency. For the purposes of this section, ''foreign government'' includes any element of a foreign government, or an international organization of governments, or any element thereof.

(3) Documents created prior to the effective date of this order shall not be disseminated outside any other agency to which they have been made available without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information that originated within that agency.

(4) For purposes of this section, the Department of Defense shall be considered one agency, except that any dissemination of information regarding intelligence sources, methods, or activities shall be consistent with directives issued pursuant to section 6.2(b) of this order.

(5) Prior consent of the originating agency is not required when referring records for declassification review that contain information originating in more than one agency.

SEC. 4.2 *Distribution Controls.*

(a) The head of each agency shall establish procedures in accordance with applicable law and consistent with directives issued pursuant to this order to ensure that classified information is accessible to the maximum extent possible by individuals who meet the criteria set forth in section 4.1(a) of this order.

(b) In an emergency, when necessary to respond to an imminent threat to life or in defense of the homeland, the agency head or any designee may authorize the disclosure of classified information (including information marked pursuant to section 4.1(i)(1) of this order) to an individual or individuals who are otherwise not eligible for access. Such actions shall be taken only in accordance with directives implementing this order and any procedure issued by agencies governing the classified information, which shall be designed to minimize the classified information that is disclosed under these circumstances and the number of individuals who receive it. Information disclosed under this provision or implementing directives and procedures shall not be deemed declassified as a result of such disclosure or subsequent use by a recipient. Such disclosures shall be reported promptly to the originator of the classified information. For purposes of this section, the Director of National Intelligence may issue an implementing directive governing the emergency disclosure of classified intelligence information.

(c) Each agency shall update, at least annually, the automatic, routine, or recurring distribution mechanism for classified information that it distributes. Recipients shall cooperate fully with distributors who are updating distribution lists and shall notify distributors whenever a relevant change in status occurs.

SEC. 4.3. *Special Access Programs.* (a) Establishment of special access programs. Unless otherwise authorized by the President, only the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, and the Director of National Intelligence, or the principal deputy of each, may create a special access program. For special access programs pertaining to intelligence sources, methods, and activities (but not including military operational, strategic, and tactical programs), this function shall be exercised by the Director of National Intelligence. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only when the program is required by statute or upon a specific finding that:

(1) the vulnerability of, or threat to, specific information is exceptional; and

(2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure.

(b) Requirements and limitations.

(1) Special access programs shall be limited to programs in which the number of persons who ordinarily will have access will be reasonably small and commensurate with the objective of providing enhanced protection for the information involved.

(2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives issued pursuant to this order.

(3) 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 and no more than one other employee of the Information Security Oversight Office or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.

(4) The agency head or principal deputy shall review annually each special access program to determine whether it continues to meet the requirements of this order.

(5) Upon request, an agency head shall brief the National Security Advisor, or a designee, on any or all of the agency's special access programs.

(6) For the purposes of this section, the term ''agency head'' refers only to the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, and the Director of National Intelligence, or the principal deputy of each.

(c) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

SEC. 4.4. *Access by Historical Researchers and Certain Former Government Personnel.*

(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

(3) 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

SEC. 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, transmittal, 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.

SEC. 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(a) 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.

SEC. 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.

(3) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (a)(1) of this section.

(4) 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.

(5) The members and staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panel's functions.

(6) 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.

(7) 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 Panel, unless changed by the President.

(f) An agency head may appeal a decision of the Panel to the President through the National Security Advisor. The information shall remain classified pending a decision on the appeal.

SEC. 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) commit necessary resources 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 when it no longer meets the standards for continued classification; 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;

(5) establishing procedures consistent with directives issued pursuant to this 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.

SEC. 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;

(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) of this section occurs; and

(2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b)(1), (2), or (3) of this section occurs.

PART 6—GENERAL PROVISIONS

SEC. 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, disseminate, process, store, or control data or information.

(e) ''Automatic declassification'' means the declassification of information based solely 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 relationship, or both, are to be held in confidence.

(*l*) ''Damage to the national security'' means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

(m) ''Declassification'' means the authorized change in the status of information from classified information to unclassified information.

(n) ''Declassification guide'' means written instructions issued by a declassification authority that describes the elements of information regarding a specific subject that may be declassified and the elements that must remain classified.

(*o*) ''Derivative classification'' means the incorporating, paraphrasing, restating, or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(p) ''Document'' means any recorded information, regardless of the nature of the medium or the method or circumstances of recording.

(q) ''Downgrading'' means a determination by a declassification 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 arranged 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 Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) information received and treated as ''foreign government information'' under the terms of a predecessor order.

(t) ''Information'' means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, is produced by or for, or is under the control of the United States Government.

(u) ''Infraction'' means any knowing, willful, or negligent 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 administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group. For purposes of automatic declassification, integral 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 information 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 a successor order.

(z) ''Intelligence Community'' means an element or agency of the U.S. Government identified in or designated pursuant to section 3(4) of the National Security Act of 1947, as amended, or section 3.5(h) of Executive 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 issued 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 computers that can exchange data or information.

(ff) ''Original classification'' means an initial determination that information requires, in the interest of the national security, protection against unauthorized disclosure.

(gg) ''Original classification authority'' means an individual authorized in writing, either by the President, the Vice President, or by agency heads or other officials designated by the President, to classify information 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, including 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.

(ii) ''Records having permanent historical value'' means Presidential papers or Presidential records and the records of an agency that the Archivist has determined should be maintained permanently in accordance with title 44, United States Code.

(jj) ''Records management'' means the planning, controlling, 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 economical 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 agency as a whole with respect to the implementation of the program established under this order and its implementing directives.

(mm) ''Senior agency official'' means the official designated 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 incorporated, paraphrased, restated, or generated in new form into a new document.

(*oo*) ''Special access program'' means a program established 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.

(pp) ''Systematic declassification review'' means the review for declassification of classified information contained in records that have been determined by the Archivist to have permanent historical value in accordance with title 44, United States Code.

(qq) ''Telecommunications'' means the preparation, transmission, or communication of information by electronic means.

(rr) ''Unauthorized disclosure'' means a communication or physical transfer of classified information to an unauthorized recipient.

(ss) ''U.S. entity'' includes:

(1) State, local, or tribal governments;

(2) State, local, and tribal law enforcement and firefighting entities;

(3) public health and medical entities;

(4) regional, state, local, and tribal emergency management entities, including State Adjutants General and other appropriate public safety entities; or

(5) private sector entities serving as part of the nation's Critical Infrastructure/Key Resources.

(tt) ''Violation'' means:

(1) any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information;

(2) any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of this order or its implementing directives; or

(3) any knowing, willful, or negligent action to create or continue a special access program contrary to the requirements of this order.

(uu) ''Weapons of mass destruction'' means any weapon of mass destruction as defined in 50 U.S.C. 1801(p).

SEC. 6.2. *General Provisions*. (a) Nothing in this order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. ''Restricted Data'' and ''Formerly Restricted Data'' shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Director of National Intelligence may, with respect to the Intelligence Community and after consultation with the heads of affected departments and agencies, issue such policy directives and guidelines as the Director of National Intelligence deems necessary to implement this order with respect to the classification and declassification of all intelligence and intelligence-related information, and for access to and dissemination of all intelligence and intelligence-related information, both in its final form and in the form when initially gathered. Procedures or other guidance issued by Intelligence Community element heads shall be in accordance with such policy directives or guidelines issued by the Director of National Intelligence. Any such policy directives or guidelines issued by the Director of National Intelligence shall be in accordance with directives issued by the Director of the Information Security Oversight Office under section 5.1(a) of this order.

(c) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(d) Nothing in this order limits the protection afforded any information by other provisions of law, including the Constitution, Freedom of Information Act exemptions, the Privacy Act of 1974, and the National Security Act of 1947, as amended. This order is not intended to and does not create any right or benefit, substantive 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. The foregoing is in addition to the specific provisos set forth in sections 1.1(b), 3.1(c) and 5.3(e) of this order.

(e) 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.

(f) This order shall be implemented subject to the availability of appropriations.

(g) Executive Order 12958 of April 17, 1995, and amendments thereto, including Executive Order 13292 of March 25, 2003, are hereby revoked as of the effective date of this order.

SEC. 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.

SEC. 6.4. *Publication*. The Archivist of the United States shall publish this Executive Order in the Federal Register.

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, ''Classified 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 towards 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 reviewing recommendations from the study that the National Security Advisor will undertake in cooperation with the Public Interest Declassification Board to design a more fundamental transformation of the security 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 publi-

cation 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 senior agency official designated under section 5.4(d) 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.

4. *Promotion of New Technologies to Support Declassification.*

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.

ORIGINAL CLASSIFICATION AUTHORITY

Order of President of the United States, dated Dec. 29, 2009, 75 F.R. 735, provided:

Pursuant to the provisions of section 1.3 of the Executive Order issued today [Ex. Ord. No. 13526, set out above], entitled ''Classified 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 and Chief of Staff

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 the Treasury

The Secretary of Defense

The Attorney General

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 Secretary of the Air Force

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 granted in 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:

Ex. Ord. No. 13010, § 7(b), July 15, 1996, 61 F.R. 37347, as amended, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

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. 31109, formerly set out as a note under this section.

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

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

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

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

(a) Certification regarding full compliance with requirements

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

(b) Limitation on certification

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

(c) Report on noncompliance

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

(d) Effects of certification of non-full compliance

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

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

(e) Waiver by Director of Central Intelligence

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

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

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

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

(B) The reasons for the waiver.

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

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

(f) Definitions

In this section:

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

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

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

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

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

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

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

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

CODIFICATION

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

CHANGE OF NAME

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

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

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

§ 435b. Security clearances

(a) Definitions

In this section:

(1) The term ''agency'' means—

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

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

(C) an element of the intelligence community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Selection of entity

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

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

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

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

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

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

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

(c) Performance of security clearance investigations

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

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

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 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 ver-

ification 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 committees 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.

(Pub. L. 108–458, title III, §3001, Dec. 17, 2004, 118 Stat. 3705.)

REFERENCES IN TEXT

Executive Order 12968, referred to in subsec. (a)(3), is set out as a note under section 435 of this title.

Executive Order 12958, referred to in subsec. (a)(4)(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 enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and not as part of the National Security Act of 1947 which comprises this chapter.

CHANGE OF NAME

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.

SECURITY CLEARANCES FOR TRANSITION TEAM MEMBERS

Pub. L. 108–458, title VII, §7601(c), Dec. 17, 2004, 118 Stat. 3857, provided that:

''(1) DEFINITION.—In this section, the term 'major party' shall have the meaning given under section 9002(6) of the Internal Revenue Code of 1986 [26 U.S.C. 9002(6)].

''(2) IN GENERAL.—Each major party candidate for President may submit, before the date of the general election, requests for security clearances for prospective transition team members who will have a need for access to classified information to carry out their responsibilities as members of the President-elect's transition team.

''(3) COMPLETION DATE.—Necessary background investigations and eligibility determinations to permit appropriate prospective transition team members to have access to classified information shall be completed, to the fullest extent practicable, by the day after the date of the general election.''

§ 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. 12958 (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 submitted under subparagraph (A) by the head of a Federal agency—

(I) the congressional defense committees;

(II) the congressional intelligence committees;

(III) the Committee on Homeland Security and Governmental Affairs of the Senate;

(IV) the Committee on Oversight and Government Reform of the House of Representatives; and

(V) each Committee of the Senate or the House of Representatives with oversight authority over such Federal agency.

(ii) Congressional defense committees

The term ''congressional defense committees'' has the meaning given that term in section 101(a)(16) of title 10.

(iii) Congressional intelligence committees

The term ''congressional intelligence committees'' has the meaning given that term in section 401a of this title.

(d) Adjudicative guidelines

(1) Requirement to establish

The President shall establish adjudicative guidelines for determining eligibility for access to classified information.

(2) Requirements related to mental health

The guidelines required by paragraph (1) shall—

(A) include procedures and standards under which a covered person is determined to be mentally incompetent and provide a means to appeal such a determination; and

(B) require that no negative inference concerning the standards in the guidelines may be raised solely on the basis of seeking mental health counseling.

(Pub. L. 108–458, title III, § 3002, as added Pub. L. 110–181, div. A, title X, § 1072(a), Jan. 28, 2008, 122 Stat. 328.)

REFERENCES IN TEXT

Executive Order 12958, referred to in subsec. (a)(4), is set out as a note under section 435 of this title.

CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 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 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)(iii);

(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) 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, 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 re-

ceiving 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.).

(July 26, 1947, ch. 343, title VIII, § 802, as added Pub. L. 103–359, title VIII, § 802(a), Oct. 14, 1994, 108 Stat. 3436; amended Pub. L. 109–177, title I, § 116(f), Mar. 9, 2006, 120 Stat. 216; Pub. L. 109–178, § 4(e), Mar. 9, 2006, 120 Stat. 281.)

REFERENCES IN TEXT

The Right to Financial Privacy Act, referred to in subsec. (f), probably means the Right to Financial Privacy Act of 1978, which is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, as amended, and is classified generally to chapter 35 (§ 3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

The Fair Credit Reporting Act, referred to in subsec. (f), is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§ 1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1601 of Title 15 and Tables.

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.

(July 26, 1947, ch. 343, title VIII, § 803, as added Pub. L. 103–359, title VIII, § 802(a), Oct. 14, 1994, 108 Stat. 3437.)

§ 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 5312(a) of title 31 and the term ''holding company'' has the meaning given to such term in section 3401(6) of title 12;

(6) the terms ''foreign power'' and ''agent of a foreign power'' have the same meanings as set forth in sections[1] 1801(a) and (b), respectively, of this title;

[1] So in original. Probably should be ''section''.

(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.

(July 26, 1947, ch. 343, title VIII, § 804, as added Pub. L. 103–359, title VIII, § 802(a), Oct. 14, 1994, 108 Stat. 3438; amended Pub. L. 106–120, title III, § 305(b), Dec. 3, 1999, 113 Stat. 1611.)

REFERENCES IN TEXT

Executive Order No. 12356, referred to in par. (2), is set out as a note under section 435 of this title.

The Atomic Energy Act of 1954, referred to in par. (2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 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 2011 of Title 42 and Tables.

AMENDMENTS

1999—Par. (8). Pub. L. 106–120 added par. (8).

SUBCHAPTER VII—APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES

§ 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 a stay pursuant to section 441 of this title for successive periods of not more than 120 days each.

(July 26, 1947, ch. 343, title IX, § 902, as added Pub. L. 104–93, title III, § 303(a), Jan. 6, 1996, 109 Stat. 964.)

§ 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.

(July 26, 1947, ch. 343, title IX, § 903, as added Pub. L. 104–93, title III, § 303(a), Jan. 6, 1996, 109 Stat. 964; amended Pub. L. 107–306, title III, § 353(b)(2)(C), Nov. 27, 2002, 116 Stat. 2402.)

AMENDMENTS

2002—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''.

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.

§ 441c. Laws subject to stay

The President may use the authority of sections 441 and 441a of this title to stay the imposition of an economic, cultural, diplomatic, or other sanction or related action by the United States Government related to the proliferation of weapons of mass destruction, their delivery systems, or advanced conventional weapons otherwise required to be imposed by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III of Public Law 102–182) [22 U.S.C. 5601 et seq.]; the Nuclear Proliferation Prevention Act of 1994 (title VIII of Public Law 103–236); title XVII of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510) (relating to the nonproliferation of missile technology); the Iran-Iraq Arms Nonproliferation Act of 1992 (title XVI of Public Law 102–484); section 573 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1994 (Public Law 103–87); section 563 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1995 (Public Law 103–306); and comparable provisions.

(July 26, 1947, ch. 343, title IX, § 904, as added Pub. L. 104–93, title III, § 303(a), Jan. 6, 1996, 109 Stat. 965.)

REFERENCES IN TEXT

The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, referred to in text, is title III of Pub. L. 102–182, Dec. 4, 1991, 105 Stat. 1245, as amended, which is classified principally to chapter 65 (§ 5601 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of Title 22 and Tables.

The Nuclear Proliferation Prevention Act of 1994, referred to in text, is title VIII of Pub. L. 103–236, Apr. 30, 1994, 108 Stat. 507, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 22, Foreign Relations and Intercourse, and Tables.

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. 101–510, Nov. 5, 1990, 104 Stat. 1750, as amended, which enacted section 2410b of the Appendix to this title and sections 2797 to 2797c of Title 22, Foreign Relations and Intercourse, amended section 2405 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.

The Iran-Iraq Arms Nonproliferation Act of 1992, referred to in text, is title XVI of div. A of Pub. L. 102–484, Oct. 23, 1992, 106 Stat. 2571, as amended, which is set out as a note under section 1701 of this title.

Section 573 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1994, referred to in text, probably means section 573 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994, Pub. L. 103–87, title V, Sept. 30, 1993, 107 Stat. 972, which is not classified to the Code.

Section 563 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1995, referred to in text, probably means section 563 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995, Pub. L. 103–306, title V, Aug. 23, 1994, 108 Stat. 1649, which is not classified to the Code.

§ 441d. Repealed. Pub. L. 108–177, title III, § 313(a), Dec. 13, 2003, 117 Stat. 2610

Section, act July 26, 1947, ch. 343, title IX, § 905, as added Pub. L. 104–93, title III, § 303(a), Jan. 6, 1996, 109 Stat. 965; amended Pub. L. 104–293, title III, § 304, Oct. 11, 1996, 110 Stat. 3464; Pub. L. 105–107, title III, § 304, Nov. 20, 1997, 111 Stat. 2252; Pub. L. 105–272, title III, § 303, Oct. 20, 1998, 112 Stat. 2400, provided that this subchapter would cease to be effective on Jan. 6, 2000.

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) of 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) either—

(A) is an employee of the intelligence community; or

(B) meets criteria for eligibility for employment in the intelligence community that are established by the Director of National Intelligence;

(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.

(July 26, 1947, ch. 343, title X, § 1001, as added Pub. L. 107–306, title III, § 331(a)(3), Nov. 27, 2002, 116 Stat. 2394; amended Pub. L. 108–458, title I, §§ 1071(a)(1)(MM), (3)(C)–(F), 1072(a)(8), Dec. 17, 2004, 118 Stat. 3689, 3690, 3692.)

PRIOR PROVISIONS

A prior section 1001 of act July 26, 1947, ch. 343, was renumbered section 1101 and is classified to section 442 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–458, § 1071(a)(1)(MM), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (b). Pub. L. 108–458, § 1072(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. (d)(1)(B). Pub. L. 108–458, § 1071(a)(3)(E), substituted ''Director of National Intelligence'' for ''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.

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; Transition Provisions note under section 401 of this title.

PILOT PROGRAM ON RECRUITMENT AND TRAINING OF INTELLIGENCE ANALYSTS

Pub. L. 108–177, title III, § 318, Dec. 13, 2003, 117 Stat. 2613, as amended by Pub. L. 108–458, title I, §§ 1071(g)(3)(A)(iii), 1072(d)(2)(B), Dec. 17, 2004, 118 Stat. 3692, 3693, provided that:

''(a) PILOT PROGRAM.—(1) The Director of National Intelligence shall carry out a pilot 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 analytic capabilities of the intelligence community are deficient or in which future analytic capabilities of the intelligence community are likely to be deficient.

''(2) A student or former student selected for participation in the pilot 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 pilot program shall be known as the Pat Roberts Intelligence Scholars Program.

''(b) ELEMENTS.—In carrying out the pilot 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 analysts; 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 analytic capabilities.

''(c) DURATION.—The Director shall carry out the pilot program under subsection (a) during fiscal years 2004 through 2006.

''(d) LIMITATION ON NUMBER OF MEMBERS DURING FISCAL YEAR 2004.—The total number of individuals participating in the pilot program under subsection (a) during fiscal year 2004 may not exceed 150 students.

''(e) RESPONSIBILITY.—The Director shall carry out the pilot program under subsection (a) through the Deputy Director of National Intelligence.

''(f) REPORTS.—(1) Not later than 120 days after the date of the enactment of this Act [Dec. 13, 2003], the Director shall submit to Congress a preliminary report on the pilot program under subsection (a), including a description of the pilot program and the authorities to be utilized in carrying out the pilot program.

''(2) Not later than one year after the commencement of the pilot program, the Director shall submit to Congress a report on the pilot program. The report shall include—

''(A) a description of the activities under the pilot program, including the number of individuals who participated in the pilot program and the training provided such individuals under the pilot program;

''(B) an assessment of the effectiveness of the pilot program in meeting the purpose of the pilot program; and

''(C) any recommendations for additional legislative or administrative action that the Director considers appropriate in light of the pilot program.

''(g) FUNDING.—Of the amounts authorized to be appropriated by this Act, $4,000,000 shall be available until expended to carry out this section.''

§ 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.

(July 26, 1947, ch. 343, title X, § 1002, as added Pub. L. 108–458, title I, § 1042, Dec. 17, 2004, 118 Stat. 3679.)

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.

§ 441g–2. Intelligence Community Scholarship Program

(a) Establishment

(1) In general

The Director of National Intelligence, in consultation with the head of each agency of the intelligence community, shall establish a scholarship program (to be known as the ''Intelligence Community Scholarship Program'') to award scholarships to individuals that is designed to recruit and prepare students for civilian careers in the intelligence community to meet the critical needs of the intelligence community agencies.

(2) Selection of recipients

(A) Merit and agency needs

Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit and the needs of the agency.

(B) Demonstrated commitment

Individuals selected under this section shall have a demonstrated commitment to the field of study for which the scholarship is awarded.

(3) Contractual agreements

To carry out the Program the head of each agency shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the agency, for the period described in subsection (g)(1) of this section, in positions needed by the agency and for which the individuals are qualified, in exchange for receiving a scholarship.

(b) Eligibility

In order to be eligible to participate in the Program, an individual shall—

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education and be pursuing or intend to pursue undergraduate or graduate education in an academic field or discipline described in the list made available under subsection (d) of this section;

(2) be a United States citizen; and

(3) at the time of the initial scholarship award, not be an employee (as defined under section 2105 of title 5).

(c) Application

An individual seeking a scholarship under this section shall submit an application to the Director of National Intelligence at such time, in such manner, and containing such information, agreements, or assurances as the Director may require.

(d) Programs and fields of study

The Director of National Intelligence shall—

(1) make publicly available a list of academic programs and fields of study for which scholarships under the Program may be used; and

(2) update the list as necessary.

(e) Scholarships

(1) In general

The Director of National Intelligence may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Director, as part of the application required under subsection (c) of this section, a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d) of this section.

(2) Limitation on years

An individual may not receive a scholarship under this section for more than 4 academic years, unless the Director of National Intelligence grants a waiver.

(3) Student responsibilities

Scholarship recipients shall maintain satisfactory academic progress.

(4) Amount

The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Director of National Intelligence, but shall in no case exceed the cost of tuition, fees, and other authorized expenses as established by the Director.

(5) Use of scholarships

A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Director of National Intelligence by regulation.

(6) Payment to institution of higher education

The Director of National Intelligence may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

(f) Special consideration for current employees

(1) Set aside of scholarships

Notwithstanding paragraphs (1) and (3) of subsection (b) of this section, 10 percent of the scholarships awarded under this section shall be set aside for individuals who are employees of agencies on December 17, 2004, to enhance the education of such employees in areas of critical needs of agencies.

(2) Full- or part-time education

Employees who are awarded scholarships under paragraph (1) shall be permitted to pursue undergraduate or graduate education under the scholarship on a full-time or part-time basis.

(g) Employee service

(1) Period of service

Except as provided in subsection (i)(2) of this section, the period of service for which an individual shall be obligated to serve as an employee of the agency is 24 months for each academic year for which a scholarship under this section is provided. Under no circumstances shall the total period of obligated service be more than 8 years.

(2) Beginning of service

(A) In general

Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

(B) Deferral

In accordance with regulations established by the Director of National Intelligence, the Director or designee may defer the obligation of an individual to provide a period of service under paragraph (1) if the Director or designee determines that such a deferral is appropriate.

(h) Repayment

(1) In general

Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Director of National Intelligence, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (i)(2) of this section. The repayment period may be extended by the Director when determined to be necessary, as established by regulation.

(2) Liability

Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Director of National Intelligence under subsection (i)(2)(B)[1] of this section, shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

(A) the total amount of scholarships received by such individual under this section; and

[1] So in original. Probably should be subsection ''(g)(2)(B)''.

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by 3.

(i) Cancellation, waiver, or suspension of obligation

(1) Cancellation

Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

(2) Waiver or suspension

The Director of National Intelligence shall prescribe regulations to provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(j) Regulations

The Director of National Intelligence shall prescribe regulations necessary to carry out this section.

(k) Definitions

In this section:

(1) Agency

The term ''agency'' means each element of the intelligence community as determined by the Director of National Intelligence.

(2) Institution of higher education

The term ''institution of higher education'' has the meaning given that term under section 1001 of title 20.

(3) Program

The term ''Program'' means the Intelligence Community Scholarship Program established under subsection (a) of this section.

(July 26, 1947, ch. 343, title X, §1003, as added Pub. L. 108–458, title I, §1043, Dec. 17, 2004, 118 Stat. 3679.)

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.

PART B—FOREIGN LANGUAGES PROGRAM

§ 441j. Program on advancement of foreign languages critical to the intelligence community

(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 (hereinafter in this part referred to as the ''Foreign Languages Program'').

(b) Identification of requisite actions

In order to carry out the Foreign Languages Program, the Secretary of Defense and the Director of National Intelligence shall jointly identify actions required to improve the education of personnel in the intelligence community 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.)

§ 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

projects of the element of the intelligence community.

(5) Cooperation with the educational institution in developing a program under which students receive academic credit at the educational institution for work on research projects of the element of the intelligence community.

(6) The provision of academic and career advice and assistance to students of the educational institution.

(7) The provision of cash awards and other items that the head of the element of the intelligence community considers appropriate.

(July 26, 1947, ch. 343, title X, § 1012, as added Pub. L. 108–487, title VI, § 612(a)(2), Dec. 23, 2004, 118 Stat. 3956.)

§ 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 voluntary 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.

(July 26, 1947, ch. 343, title X, § 1013, as added Pub. L. 108–487, title VI, § 612(a)(2), Dec. 23, 2004, 118 Stat. 3957.)

REFERENCES IN TEXT

The Volunteer Protection Act of 1997, referred to in subsec.(d)(2)(A), is Pub. L. 105–19, June 18, 1997, 111 Stat. 218, which is classified generally to chapter 139 (§ 14501 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 14501 of Title 42 and Tables.

§ 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

title with respect to that element including the following:

(1) Procedures to be utilized for the acceptance of voluntary services under section 441j–2 of this title.

(2) Procedures and requirements relating to the installation of equipment under section 441j–2(f) of this title.

(July 26, 1947, ch. 343, title X, § 1014, as added Pub. L. 108–487, title VI, § 612(a)(2), Dec. 23, 2004, 118 Stat. 3958.)

§ 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)(C) 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).

(July 26, 1947, ch. 343, title X, § 1015, as added Pub. L. 108–487, title VI, § 612(a)(2), Dec. 23, 2004, 118 Stat. 3958.)

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 the training described in that subsection, including costs of educational and supplementary reading materials.

(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.

(July 26, 1947, ch. 343, title X, § 1021, as added Pub. L. 108–487, title VI, § 612(a)(2), Dec. 23, 2004, 118 Stat. 3959.)

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.

(July 26, 1947, ch. 343, title XI, § 1101, formerly title X, § 1001, as added Pub. L. 106–567, title III, § 308(a), Dec. 27, 2000, 114 Stat. 2839; renumbered title XI, § 1101, Pub. L. 107–306, title III, § 331(a)(1), (2), Nov. 27, 2002, 116 Stat. 2394.)

§ 442a. Counterintelligence initiatives

(a) Inspection process

(1) 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.

(2) The Director shall carry out the process through the Office of the National Counterintelligence Executive.

(b) Annual review of dissemination lists

(1) 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.

(2) Not later than October 15 of each year, the Director shall certify to the congressional intelligence committees that the review required under paragraph (1) has been conducted in all elements of the intelligence community during the preceding fiscal year.

(c) Completion of financial disclosure statements required for access to certain classified information

(1) 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.

(2) The Director shall carry out paragraph (1) through the Office of the National Counterintelligence Executive.

(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.

(July 26, 1947, ch. 343, title XI, §1102, as added Pub. L. 108–177, title III, §341(a)(1), Dec. 13, 2003, 117 Stat. 2615; amended Pub. L. 108–458, title I, §1071(a)(1)(NN)–(QQ), Dec. 17, 2004, 118 Stat. 3689, 3690.)

AMENDMENTS

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)(OO), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (c)(1). Pub. L. 108–458, §1071(a)(1)(PP), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (d). Pub. L. 108–458, §1071(a)(1)(QQ), 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.

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; Transition Provisions note under section 401 of this title.

CHAPTER 16—DEFENSE INDUSTRIAL RESERVES

Sec.
451 to 454. Transferred or Repealed.
455. Authorization of appropriations.
456 to 462. Omitted.

§§ 451 to 453. Transferred

CODIFICATION

Sections 451, 452, and 453 of this title were transferred to section 2535 of Title 10, Armed Forces, and redesignated as subsecs. (a), (c), and (b), respectively, of section 2535 by Pub. L. 102–484, div. D, title XLII, §4235(a)(2), (3), (b), Oct. 23, 1992, 106 Stat. 2690, 2691.

Section 451, acts July 2, 1948, ch. 811, §2, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, §809, 87 Stat. 617, related to Congressional declaration of purpose and policy in enacting this chapter.

Section 452, acts July 2, 1948, ch. 811, §3, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, §809, 87 Stat. 617, defined ''Secretary'', ''Defense Industrial Reserve'', and ''plant equipment package'' for purposes of this chapter.

Section 453, acts July 2, 1948, ch. 811, §4, 62 Stat. 1226; Nov. 16, 1973, Pub. L. 93–155, title VIII, §809, 87 Stat. 617; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, §1359(a), 100 Stat. 3999, related to powers and duties of Secretary of Defense, reimbursement for transferred Defense Industrial Reserve equipment, and regulations.

SHORT TITLE

Section 1 of act July 2, 1948, as amended by Pub. L. 93–155, §809, provided: ''That this Act [enacting this chapter] may be cited as the 'Defense Industrial Reserve Act'.''

§454. Repealed. Pub. L. 101–510, div. A, title XIII, §1303(a), Nov. 5, 1990, 104 Stat. 1669

Section, acts July 2, 1948, ch. 811, §5, 62 Stat. 1226; Nov. 16, 1973, Pub. L. 93–155, title VIII, §809, 87 Stat. 618, related to reports concerning status of defense industrial reserve.

§455. Authorization of appropriations

There are authorized to be appropriated such sums as the Congress may from time to time determine to be necessary to enable the Secretary to carry out the provisions of this chapter.

(July 2, 1948, ch. 811, §6, 62 Stat. 1226; Pub. L. 93–155, title VIII, §809, Nov. 16, 1973, 87 Stat. 618.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 14 of act July 2, 1948, ch. 811, 62 Stat. 1228 (classified to section 462 of this title) prior to the general amendment of act July 2, 1948, by Pub. L. 93–155.

AMENDMENTS

1973—Pub. L. 93–155 substituted provisions respecting authorization of appropriations, for prior provisions respecting acceptance of plants by Administrator of General Services, disposition of plants, and conditions of lease, now covered in section 453 of this title.

§§ 456 to 462. Omitted

CODIFICATION

Sections 456 to 462 were omitted in the general amendment of act July 2, 1948, ch. 811 by Pub. L. 93–155, title VIII, §809, Nov. 16, 1973, 87 Stat. 617. See sections 453 to 455 of this title.

Section 456, act July 2, 1948, ch. 811, §7, 62 Stat. 1227, related to powers of Secretary of Defense respecting

property in national industrial reserve. See section 453 of this title.

Section 457, act July 2, 1948, ch. 811, §8, 62 Stat. 1227, related to transportation, maintenance, disposition, etc., of transferred property. See section 453 of this title.

Section 458, act July 2, 1948, ch. 811, §9, 62 Stat. 1227, related to limitation on acquisition of property.

Section 459, act July 2, 1948, ch. 811, §10, 62 Stat. 1227, provided for an Industrial Reserve Review Committee, its composition, appointment, tenure, and compensation and related to inapplicability of certain laws to Committee solely by reason of appointment to and membership on such Committee.

Section 460, act July 2, 1948, ch. 811, §11, 62 Stat. 1228, related to duties of Industrial Reserve Review Committee, including making of recommendations to Secretary of Defense.

Section 461, act July 2, 1948, ch. 811, §12, 62 Stat. 1228, provided for reports to Congress. See section 454 of this title.

Section 462, acts July 2, 1948, ch. 811, §14, 62 Stat. 1228; June 30, 1949, ch. 288, title I, §103, 63 Stat. 380, authorized appropriations. See section 455 of this title.

CHAPTER 17—ARMING AMERICAN VESSELS

§ 481. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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 351 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.
492. Acquisition of land.
493. Authorization of appropriations.
494. Supervision and control of project.

§ 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 3324(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 as it may deem necessary for the purpose of audit. 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 where such negotiations or proceedings involve contracts authorized by this paragraph shall be in accordance with the provisions of sections 501–505 of title 40.

(Mar. 30, 1949, ch. 41, §1, 63 Stat. 17; Aug. 3, 1956, ch. 939, title III, §303, 70 Stat. 1012; Pub. L. 97–214, §10(b)(4), July 12, 1982, 96 Stat. 175; Pub. L. 104–316, title I, §128(a), Oct. 19, 1996, 110 Stat. 3841; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

CODIFICATION

''Section 3324(a) and (b) of title 31'' substituted in text for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In text, ''sections 501–505 of title 40'' substituted for ''section 201 of the Act of June 30, 1949, as amended (40 U.S.C.A. sec. 481)'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in second par.

1996—Pub. L. 104–316, in third sentence of second par., struck out ''no termination payment shall be final until audited and approved by'' after ''$222,000,000 and'', struck out ''which'' after ''Office'', and inserted ''of audit'' after ''for the purpose''.

1982—Pub. L. 97–214 struck out reference to sections 1136 [10 U.S.C. 4774, 9774] and 3734 [40 U.S.C. 259, 267] of the Revised Statutes.

1956—Act Aug. 3, 1956, authorized procurement of communication services required for the semiautomatic ground environment system.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing, authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

§ 492. Acquisition of land

In furtherance of section 491 of this title, the Secretary of the Air Force is authorized to make surveys and 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.

(Mar. 30, 1949, ch. 41, § 2, 63 Stat. 17.)

§ 493. 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.

(Mar. 30, 1949, ch. 41, § 3, 63 Stat. 18.)

§ 494. Supervision and control of project

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. 412, § 12(a), 63 Stat. 591.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in text, is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CHANGE OF NAME

''Department of Defense'' substituted in text for ''National Military Establishment'' on authority of act Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591.

CHAPTER 19—GUIDED MISSILES

Sec.
501. Establishment of long-range proving ground for guided missiles and other weapons; jurisdiction of Secretary of the Air Force; use by all Services.
502. Acquisition of land.
503. Authorization of appropriations.
504. Delegation of authority by Secretary of Defense; contributions for support.

§ 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

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 or other interests pertaining thereto, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, without regard to section 3324(a) and (b) of title 31. Prior to the acquisition under the authority of this section of any lands or rights or other interests pertaining thereto, the Secretary of the Air Force shall come into agreement with the Armed Services Committees of the Senate and the House of Representatives with respect to the acquisition of such lands, rights, or other interests.

(May 11, 1949, ch. 98, § 2, 63 Stat. 66.)

CODIFICATION

''Section 3324(a) and (b) of title 31'' substituted in text for ''section 3648, Revised Statutes, as amended [31 U.S.C. 529]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 503. Authorization of appropriations

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, not to exceed $75,000,000 to carry out the purposes of sections 501 and 502 of this title.

(May 11, 1949, ch. 98, § 3, 63 Stat. 66.)

§ 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 revise 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

2000—Pub. L. 106–391 substituted ''transsonic, supersonic, and hypersonic'' for ''transsonic and supersonic''.

1958—Pub. L. 85–568 substituted ''The Administrator of the National Aeronautics and Space Administration (hereinafter referred to as the 'Administrator')'' for ''The National Advisory Committee for Aeronautics (hereinafter referred to as the 'Committee')'', and ''Administrator'' for ''Committee'' in second sentence.

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 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.

§ 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 accessory 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.

(Oct. 27, 1949, ch. 766, title I, § 103, 63 Stat. 937; Pub. L. 85–568, title III, § 301(d)(2), (3), July 29, 1958, 72 Stat. 433; Pub. L. 106–391, title III, § 312(2), Oct. 30, 2000, 114 Stat. 1594.)

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'' in subsecs. (a) and (c), and ''his'' for ''its'' in subsec. (a).

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.

ADDITIONAL APPROPRIATIONS

Act June 29, 1950, ch. 405, § 801, 64 Stat. 286, provided in part for an additional appropriation of $75,000,000, to remain available until expended; for the construction and completion and equipment of facilities at the Langley Aeronautical Laboratory, Langley Air Force Base, Virginia.

§ 514. Expansion of facilities at Carderock, Maryland

The Secretary of the Navy is authorized, in implementation of the unitary plan, to expand the naval facilities at the David W. Taylor Model Basin, Carderock, Maryland, by the construction of a wind tunnel, including buildings, equipment, utilities, and accessory construction, at a cost not to exceed $6,600,000.

(Oct. 27, 1949, ch. 766, title I, § 104, 63 Stat. 937.)

§ 515. Reports to Congress

The Administrator shall submit semi-annual written reports to the Congress covering the selection of institutions and contracts entered into pursuant to section 512 of this title together with other pertinent information relative to the Administrator's activities and accomplishments thereunder.

(Oct. 27, 1949, ch. 766, title I, § 105, 63 Stat. 937; Pub. L. 85–568, title III, § 301(d)(2), July 29, 1958, 72 Stat. 433.)

AMENDMENTS

1958—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 3324(a) and (b) of title 31.

(Oct. 27, 1949, ch. 766, title II, § 202, 63 Stat. 937.)

CODIFICATION

''Section 3324(a) and (b) of title 31'' substituted in text for ''section 3648, Revised Statutes, as amended [31 U.S.C. 529]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 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 maximum number of employees imposed by section 14(a)[1] 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

[1] See References in Text note below.

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.

CHAPTER 22—UNIFORM CODE OF MILITARY JUSTICE

SUBCHAPTER I—GENERAL PROVISIONS

§§ 551 to 556. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 551, act May 5, 1950, ch. 169, §1, 64 Stat. 108, defined terms used in this chapter. See sections 101 and 801 of Title 10, Armed Forces.

Section 552, acts May 5, 1950, ch. 169, §1, 64 Stat. 109; Aug. 1, 1956, ch. 852, §23, 70 Stat. 911, related to persons subject to Articles of War. See section 802 of Title 10. Act Aug. 1, 1956, ch. 852, §23, 70 Stat. 911 was repealed by Pub. L. 87–651, title III, §307A, Sept. 7, 1962, 76 Stat. 526.

Section 553, act May 5, 1950, ch. 169, §1, 64 Stat. 109, related to jurisdiction to try certain personnel. See section 803 of Title 10.

Section 554, act May 5, 1950, ch. 169, §1, 64 Stat. 110, provided for dismissed officer's right to trial by court-martial. See section 804 of Title 10.

Section 555, act May 5, 1950, ch. 169, §1, 64 Stat. 110, provided that this chapter should be applicable in all places. See section 805 of Title 10.

Section 556, act May 5, 1950, ch. 169, §1, 64 Stat. 110, related to judge advocates and legal officers. See section 806 of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, §53 footnote, 70A Stat. 680.

SUBCHAPTER II—APPREHENSION AND RESTRAINT

§§ 561 to 568. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 561, act May 5, 1950, ch. 169, §1, 64 Stat. 111, related to apprehension. See section 807 of Title 10, Armed Forces.

Section 562, act May 5, 1950, ch. 169, §1, 64 Stat. 111, provided for apprehension of deserters. See section 808 of Title 10.

Section 563, act May 5, 1950, ch. 169, §1, 64 Stat. 111, related to imposition of restraint. See section 809 of Title 10.

Section 564, act May 5, 1950, ch. 169, §1, 64 Stat. 111, related to restraint of persons charged with offenses. See section 810 of Title 10.

Section 565, act May 5, 1950, ch. 169, §1, 64 Stat. 112, provided for reports and receiving of prisoners. See section 811 of Title 10.

Section 566, act May 5, 1950, ch. 169, §1, 64 Stat. 112, prohibited confinement of members of armed forces with enemy prisoners. See section 812 of Title 10.

Section 567, act May 5, 1950, ch. 169, §1, 64 Stat. 112, prohibited punishment before trial. See section 813 of Title 10.

Section 568, act May 5, 1950, ch. 169, §1, 64 Stat. 112, related to delivery of offenders to civil authorities. See section 814 of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, §53 footnote, 70A Stat. 680.

SUBCHAPTER III—NON-JUDICIAL PUNISHMENT

§ 571. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section, act May 5, 1950, ch. 169, §1, 64 Stat. 112, related to commanding officer's non-judicial punishment. See section 815 of Title 10, Armed Forces.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, §53 footnote, 70A Stat. 680.

SUBCHAPTER IV—COURTS-MARTIAL JURISDICTION

§§ 576 to 581. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 576, act May 5, 1950, ch. 169, §1, 64 Stat. 113, classified types of courts-martial. See section 816 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, related to jurisdiction of summary courts-martial. See section 820 of Title 10.

Section 581, act May 5, 1950, ch. 169, §1, 64 Stat. 115, provided that jurisdiction of courts-martial was not exclusive. See section 821 of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, §53 footnote, 70A Stat. 680.

SUBCHAPTER V—APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

§§ 586 to 593. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, § 53 footnote, 70A Stat. 680.

SUBCHAPTER VI—PRETRIAL PROCEDURE

§§ 601 to 606. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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.

Section 606, act May 5, 1950, ch. 169, § 1, 64 Stat. 119, provided for service of charges. See section 835 of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, § 53 footnote, 70A Stat. 680.

SUBCHAPTER VII—TRIAL PROCEDURE

§§ 611 to 629. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 611, act May 5, 1950, ch. 169, § 1, 64 Stat. 120, authorized President to prescribe rules. See section 836 of Title 10, Armed Forces.

Section 612, act May 5, 1950, ch. 169, § 1, 64 Stat. 120, related to unlawfully influencing action of court. See section 837 of Title 10.

Section 613, act May 5, 1950, ch. 169, § 1, 64 Stat. 120, provided for duties of trial counsel and defense counsel. See section 838 of Title 10.

Section 614, act May 5, 1950, ch. 169, § 1, 64 Stat. 121, related to sessions of the courts-martial. See section 839 of Title 10.

Section 615, act May 5, 1950, ch. 169, § 1, 64 Stat. 121, provided for continuances. See section 840 of Title 10.

Section 616, act May 5, 1950, ch. 169, § 1, 64 Stat. 121, provided for challenges. See section 841 of Title 10.

Section 617, act May 5, 1950, ch. 169, § 1, 64 Stat. 121, related to oaths. See section 842 of Title 10.

Section 618, act May 5, 1950, ch. 169, § 1, 64 Stat. 121, related to statutes of limitation. See section 843 of Title 10.

Section 619, act May 5, 1950, ch. 169, § 1, 64 Stat. 122, related to former jeopardy. See section 844 of Title 10.

Section 620, act May 5, 1950, ch. 169, § 1, 64 Stat. 122, related to pleas of the accused. See section 845 of Title 10.

Section 621, act May 5, 1950, ch. 169, § 1, 64 Stat. 122, related to opportunity to obtain witnesses and other evidence. See section 846 of Title 10.

Section 622, act May 5, 1950, ch. 169, § 1, 64 Stat. 123, provided for refusal to appear or testify. See section 847 of Title 10.

Section 623, act May 5, 1950, ch. 169, § 1, 64 Stat. 123, related to contempts. See section 848 of Title 10.

Section 624, act May 5, 1950, ch. 169, § 1, 64 Stat. 123, related to depositions. See section 849 of Title 10.

Section 625, act May 5, 1950, ch. 169, § 1, 64 Stat. 124, provided for admissibility of records of courts of inquiry. See section 850 of Title 10.

Section 626, act May 5, 1950, ch. 169, § 1, 64 Stat. 124, provided for methods of voting and rulings. See section 851 of Title 10.

Section 627, act May 5, 1950, ch. 169, § 1, 64 Stat. 125, prescribed number of votes required. See section 852 of Title 10.

Section 628, act May 5, 1950, ch. 169, 64 Stat. 125, required every court-martial to announce its findings and sentence. See section 853 of Title 10.

Section 629, act May 5, 1950, ch. 169, § 1, 64 Stat. 125, related to record of trial. See section 858 of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, § 53 footnote, 70A Stat. 680.

SUBCHAPTER VIII—SENTENCES

§§ 636 to 639. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 636, act May 5, 1950, ch. 169, § 1, 64 Stat. 126, prohibited cruel and unusual punishments. See section 855 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 639, 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

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, § 53 footnote, 70A Stat. 680.

SUBCHAPTER IX—REVIEW OF COURTS-MARTIAL

§§ 646 to 663. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 646, act May 5, 1950, ch. 169, § 1, 64 Stat. 127, related to errors of law and to lesser included offense. See section 859 of Title 10, Armed Forces.

Section 647, act May 5, 1950, ch. 169, § 1, 64 Stat. 127, provided for initial action on record. See section 860 of Title 10.

Section 648, act May 5, 1950, ch. 169, § 1, 64 Stat. 127, provided for initial action on general court-martial records. See section 861 of Title 10.

Section 649, act May 5, 1950, ch. 169, § 1, 64 Stat. 127, provided for reconsideration and revision. See section 862 of Title 10.

Section 650, act May 5, 1950, ch. 169, § 1, 64 Stat. 127, related to rehearings. See section 863 of Title 10.

Section 651, act May 5, 1950, ch. 169, § 1, 64 Stat. 128, related to approval by convening authority. See section 864 of Title 10.

Section 652, act May 5, 1950, ch. 169, § 1, 64 Stat. 128, provided for disposition of records after review by convening authority. See section 865 of Title 10.

Section 653, act May 5, 1950, ch. 169, § 1, 64 Stat. 128, provided for review by board of review. See section 866 of Title 10.

Section 654, acts May 5, 1950, ch. 169, § 1, 64 Stat. 130; Mar. 2, 1955, ch. 9, § 1(i), 69 Stat. 10, provided for review by the Court of Military Appeals. See section 867 of Title 10.

Section 655, act May 5, 1950, ch. 169, § 1, 64 Stat. 130, authorized establishment of branch offices of The Judge Advocate General. See section 868 of Title 10.

Section 656, act May 30, 1950, ch. 169, § 1, 64 Stat. 130, provided for review in office of The Judge Advocate General. See section 869 of Title 10.

Section 657, act May 5, 1950, ch. 169, § 1, 64 Stat. 130, provided for appellate counsel. See section 870 of Title 10.

Section 658, act May 5, 1950, ch. 169, § 1, 64 Stat. 131, provided for execution of sentence and suspension of sentence. See section 871 of Title 10.

Section 659, act May 5, 1950, ch. 169, § 1, 64 Stat. 131, related to vacation of suspension of a court-martial sentence. See section 872 of Title 10.

Section 660, act May 5, 1950, ch. 169, §1, 64 Stat. 132, provided for a petition for a new trial. See section 873 of Title 10.

Section 661, act May 5, 1950, ch. 169, §1, 64 Stat. 132, authorized remission and suspension of sentences. See section 874 of Title 10.

Section 662, act May 5, 1950, ch. 169, §1, 64 Stat. 132, related to restoration of rights, privileges, and property. See section 875 of Title 10.

Section 663, act May 5, 1950, ch. 169, §1, 64 Stat. 132, related to finality of court-martial judgments. See section 876 of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, §53 footnote, 70A Stat. 680.

SUBCHAPTER X—PUNITIVE ARTICLES

§§ 671 to 728. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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 insubordinate conduct towards noncommissioned officer. See section 891 of Title 10.

Section 686, act May 5, 1950, ch. 169, §1, 64 Stat. 136, related to failure to obey order or regulation. See section 892 of Title 10.

Section 687, act May 5, 1950, ch. 169, §1, 64 Stat. 136, related to cruelty and maltreatment. See section 893 of Title 10.

Section 688, act May 5, 1950, ch. 169, §1, 64 Stat. 136, related to mutiny or sedition. See section 894 of Title 10.

Section 689, act May 5, 1950, ch. 169, §1, 64 Stat. 136, related to arrest and confinement. See section 895 of Title 10.

Section 690, act May 5, 1950, ch. 169, §1, 64 Stat. 136, related to releasing prisoner without proper authority. See section 896 of Title 10.

Section 691, act May 5, 1950, ch. 169, §1, 64 Stat. 137, related to unlawful detention of another. See section 897 of Title 10.

Section 692, act May 5, 1950, ch. 169, §1, 64 Stat. 137, related to noncompliance with procedural rules. See section 898 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 subordinate compelling surrender. See section 900 of Title 10.

Section 695, act May 5, 1950, ch. 169, §1, 64 Stat. 137, related to improper use of countersign. See section 901 of Title 10.

Section 696, act May 5, 1950, ch. 169, §1, 64 Stat. 137, related to forcing a safeguard. See section 902 of Title 10.

Section 697, act May 5, 1950, ch. 169, §1, 64 Stat. 138, related to captured or abandoned property. See section 903 of Title 10.

Section 698, act May 5, 1950, ch. 169, §1, 64 Stat. 138, related to aiding the enemy. See section 904 of Title 10.

Section 699, act May 5, 1950, ch. 169, §1, 64 Stat. 138, related to misconduct as a prisoner. See section 905 of Title 10.

Section 700, act May 5, 1950, ch. 169, §1, 64 Stat. 138, related to spies. See section 906 of Title 10.

Section 701, act May 5, 1950, ch. 169, §1, 64 Stat. 138, related to false official statements. See section 907 of Title 10.

Section 702, act May 5, 1950, ch. 169, §1, 64 Stat. 138, related to loss, damage, destruction, or wrongful disposition of military property. See section 908 of Title 10.

Section 703, act May 5, 1950, ch. 169, §1, 64 Stat. 139, related to waste, spoil or destruction of property other than military property. See section 909 of Title 10.

Section 704, act May 5, 1950, ch. 169, §1, 64 Stat. 139, related to improper hazarding of vessel. See section 910 of Title 10.

Section 705, act May 5, 1950, ch. 169, §1, 64 Stat. 139, related to drunken or reckless driving. See section 911 of Title 10.

Section 706, act May 5, 1950, ch. 169, §1, 64 Stat. 139, related to drunk on duty. See section 912 of Title 10.

Section 707, act May 5, 1950, ch. 169, §1, 64 Stat. 139, related to misbehavior of sentinel. See section 913 of Title 10.

Section 708, act May 5, 1950, ch. 169, §1, 64 Stat. 139, related to dueling. See section 914 of Title 10.

Section 709, act May 5, 1950, ch. 169, §1, 64 Stat. 139, related to malingering. See section 915 of Title 10.

Section 710, act May 5, 1950, ch. 169, §1, 64 Stat. 139, related to riot or breach of peace. See section 916 of Title 10.

Section 711, act May 5, 1950, ch. 169, §1, 64 Stat. 139, related to provoking speeches or gestures. See section 917 of Title 10.

Section 712, act May 5, 1950, ch. 169, §1, 64 Stat. 140, related to murder. See section 918 of Title 10.

Section 713, act May 5, 1950, ch. 169, §1, 64 Stat. 140, related to manslaughter. See section 919 of Title 10.

Section 714, act May 5, 1950, ch. 169, §1, 64 Stat. 140, related to rape and carnal knowledge. See section 920 of Title 10.

Section 715, act May 5, 1950, ch. 169, §1, 64 Stat. 140, related to larceny and wrongful appropriation. See section 921 of Title 10.

Section 716, act May 5, 1950, ch. 169, §1, 64 Stat. 140, related to robbery. See section 922 of Title 10.

Section 717, act May 5, 1950, ch. 169, §1, 64 Stat. 141, related to forgery. See section 923 of Title 10.

Section 718, act May 5, 1950, ch. 169, §1, 64 Stat. 141, related to maiming. See section 924 of Title 10.

Section 719, act May 5, 1950, ch. 169, §1, 64 Stat. 141, related to sodomy. See section 925 of Title 10.

Section 720, act May 5, 1950, ch. 169, §1, 64 Stat. 141, related to arson. See section 926 of Title 10.

Section 721, act May 5, 1950, ch. 169, §1, 64 Stat. 141, related to extortion. See section 927 of Title 10.

Section 722, act May 5, 1950, ch. 169, §1, 64 Stat. 141, related to assault. See section 928 of Title 10.

Section 723, act May 5, 1950, ch. 169, § 1, 64 Stat. 142, related to burglary. See section 929 of Title 10.

Section 724, act May 5, 1950, ch. 169, § 1, 64 Stat. 142, related to housebreaking. See section 930 of Title 10.

Section 725, act May 5, 1950, ch. 169, § 1, 64 Stat. 142, related to perjury. See section 931 of Title 10.

Section 726, act May 5, 1950, ch. 169, § 1, 64 Stat. 142, related to frauds against Government. See section 932 of Title 10.

Section 727, act May 5, 1950, ch. 169, § 1, 64 Stat. 142, related to conduct unbecoming an officer and gentleman. See section 933 of Title 10.

Section 728, act May 5, 1950, ch. 169, § 1, 64 Stat. 142, was a general article covering offenses not specifically defined. See section 934 of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, § 53 footnote, 70A Stat. 680.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS

§§ 731 to 739. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, § 53 footnote, 70A Stat. 680.

§ 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 that World War II was deemed to have ended as of May 31, 1951.

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.

§ 741. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, eff. Jan. 1, 1957

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

Repeal effective Jan. 1, 1957, see act Aug. 10, 1956, ch. 1041, § 53 footnote, 70A Stat. 680.

CHAPTER 22A—REPRESENTATION OF ARMED FORCES PERSONNEL BEFORE FOREIGN JUDICIAL TRIBUNALS

§§ 751 to 755. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1570

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 795. 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.

Sec.
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.
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.

§ 781. Repealed. Pub. L. 103–199, title VIII, § 803(1), Dec. 17, 1993, 107 Stat. 2329

Section, acts Sept. 23, 1950, ch. 1024, title I, §2, 64 Stat. 987; Jan. 2, 1968, Pub. L. 90–237, §1, 81 Stat. 765, related to Congressional finding of necessity to control subversive activities.

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, 729, 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 402 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, 729, 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. 23, 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.''

§ 782. Repealed. Pub. L. 103–199, title VIII, § 803(1), Dec. 17, 1993, 107 Stat. 2329

Section, acts Sept. 23, 1950, ch. 1024, title I, §3, 64 Stat. 989; Aug. 24, 1954, ch. 886, §7(a), (b), 68 Stat. 777; May 31, 1962, Pub. L. 87–474, §1(a), 76 Stat. 91; Jan. 2, 1968, Pub. L. 90–237, §2, 81 Stat. 765, defined terms for purposes of this subchapter.

§ 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 the commission of such offense, notwithstanding the provisions of any other statute of limitations: *Provided*, That if at the time of the commission of the offense such person is an 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, such 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.

(Sept. 23, 1950, ch. 1024, title I, §4, 64 Stat. 991; Pub. L. 90–237, §3, Jan. 2, 1968, 81 Stat. 765; Pub. L. 103–199, title VIII, §803(2), Dec. 17, 1993, 107 Stat. 2329; Pub. L. 103–359, title VIII, §804(c), Oct. 14, 1994, 108 Stat. 3440.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–359 added subsec. (e).

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).

Subsecs. (c) to (e). Pub. L. 103–199, §803(2)(B), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsec. (f). Pub. L. 103–199, §803(2)(A), struck out subsec. (f) which read as follows: ''Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute.''

1968—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 (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.

§§ 784, 785. Repealed. Pub. L. 103–199, title VIII, §803(1), Dec. 17, 1993, 107 Stat. 2329

Section 784, acts Sept. 23, 1950, ch. 1024, title I, §5, 64 Stat. 992; Aug. 24, 1954, ch. 886, §§6, 7(c), 68 Stat. 777, 778; May 31, 1962, Pub. L. 87–474, §1(b), 76 Stat. 91; Jan. 2, 1968, Pub. L. 90–237, §4, 81 Stat. 765, related to employment of members of Communist organizations.

Section 785, acts Sept. 23, 1950, ch. 1024, title I, §6, 64 Stat. 993; Aug. 24, 1954, ch. 886, §7(c), 68 Stat. 778, related to denial of United States passports to members of Communist organizations.

§§ 786, 787. Repealed. Pub. L. 90–237, §5, Jan. 2, 1968, 81 Stat. 766

Section 786, acts Sept. 23, 1950, ch. 1024, title I, §7, 64 Stat. 993; 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 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.

§§ 788 to 795. Repealed. Pub. L. 103–199, title VIII, § 803(1), Dec. 17, 1993, 107 Stat. 2329

Section 788, acts Sept. 23, 1950, ch. 1024, title I, § 9, 64 Stat. 995; Jan. 2, 1968, Pub. L. 90–237, § 6, 81 Stat. 766, related to records of final orders of Subversive Activities Control Board and to public inspection of those records.

Section 789, acts Sept. 23, 1950, ch. 1024, title I, § 10, 64 Stat. 996; Aug. 24, 1954, ch. 886, § 8(a), 68 Stat. 778; Jan. 2, 1968, Pub. L. 90–237, § 7, 81 Stat. 766, related to use of mails and instrumentalities of interstate or foreign commerce by Communist organizations.

Section 790, acts Sept. 23, 1950, ch. 1024, title I, § 11, 64 Stat. 996; Aug. 24, 1954, ch. 886, § 8(b), 68 Stat. 778; Jan. 2, 1968, Pub. L. 90–237, § 8, 81 Stat. 767; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, related to denial of tax deductions and exemptions for contributions to Communist organizations.

Section 791, acts Sept. 23, 1950, ch. 1024, title I, § 12, 64 Stat. 977; July 12, 1952, ch. 697, 66 Stat. 590; Aug. 24, 1954, ch. 886, § 9(a), 68 Stat. 778; Aug. 5, 1955, ch. 580, § 1, 69 Stat. 539; Jan. 2, 1968, Pub. L. 90–237, § 9, 81 Stat. 767, established the Subversive Activities Control Board and provided for its Chairman, membership, filling of vacancies, duties, appointment and compensation of personnel, reports to Congress and President, appropriations, and termination of the Board on June 30, 1969, unless in the period beginning Jan. 2, 1968 and ending Dec. 31, 1968, a proceeding was instituted.

Section 792, acts Sept. 23, 1950, ch. 1024, title I, § 13, 64 Stat. 998; Aug. 24, 1954, ch. 886, § 9(b), 68 Stat. 778; Jan. 2, 1968, Pub. L. 90–237, § 10, 81 Stat. 768; Oct. 15, 1970, Pub. L. 91–452, title II, § 247, 84 Stat. 931, related to Board proceedings with respect to Communist action and Communist front organizations and provided for petition by Attorney General to Board for determination of Communist action or Communist front organizations, petition for review, not more than once every calendar year, for redetermination by Board, public hearings, criteria to be considered in making determinations, written report of findings to be served on Attorney General, and publication of final orders in the Federal Register.

Section 792a, acts Sept. 23, 1950, ch. 1024, title I, § 13A, as added Aug. 24, 1954, ch. 886, § 10, 68 Stat. 778; amended July 26, 1955, ch. 381, 69 Stat. 375; Jan. 2, 1968, Pub. L. 90–237, § 11, 81 Stat. 771; Nov. 8, 1984, Pub. L. 98–620, title IV, § 402(53), 98 Stat. 3361, related to labor organizations determined by Board to be Communist.

Section 793, acts Sept. 23, 1950, ch. 1024, title I, § 14, 64 Stat. 1001; Aug. 24, 1954, ch. 886, § 11, 68 Stat. 780; Aug. 28, 1958, Pub. L. 85–791, § 29, 72 Stat. 950; Jan. 2, 1968, Pub. L. 90–237, § 12, 81 Stat. 771, provided for judicial review of orders of Board to United States Court of Appeals for the District of Columbia if petition was filed within sixty days from date of service of such order and specified time of finality of the Board's orders.

Section 794, acts Sept. 23, 1950, ch. 1024, title I, § 15, 64 Stat. 1002; Jan. 2, 1968, Pub. L. 90–237, § 13, 81 Stat. 771, provided for penalties for violation of former sections 784 and 789 of this title.

Section 795, act 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) Misdemeanor violation of defense property security regulations

(1) Misdemeanor

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 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 thereto 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.

(Sept. 23, 1950, ch. 1024, title I, § 21, 64 Stat. 1005; Pub. L. 109–163, div. A, title X, § 1053, Jan. 6, 2006, 119 Stat. 3435.)

AMENDMENTS

2006—Pub. L. 109–163 amended section generally. Prior to amendment, section related to security regulations and orders and penalties for violations.

§ 798. Repealed. Pub. L. 103–199, title VIII, § 803(1), Dec. 17, 1993, 107 Stat. 2329

Section, act Sept. 23, 1950, ch. 1024, title I, § 1(b), 64 Stat. 987, provided that the Internal Security Act of 1950 not be construed to authorize, require, or establish military or civilian censorship or in any way to limit or infringe upon freedom of press or of speech as guaranteed by Constitution.

SUBCHAPTER II—EMERGENCY DETENTION OF SUSPECTED SECURITY RISKS

§§ 811 to 826. Repealed. Pub. L. 92–128, § 2(a), Sept. 25, 1971, 85 Stat. 348

Section 811, act Sept. 23, 1950, ch. 1024, title II, § 101, 64 Stat. 1019, related to Congressional finding of necessity.

Section 812, act Sept. 23, 1950, ch. 1024, title II, § 102, 64 Stat. 1021, related to declaration of ''internal security emergency'' by the President, events warranting the declaration, and period of existence.

Section 813, act Sept. 23, 1950, ch. 1024, title II, § 103, 64 Stat. 1021, related to detention during emergency and to release.

Section 814, act Sept. 23, 1950, ch. 1024, title II, § 104, 64 Stat. 1022, related to procedure for apprehension and detention, providing in subsecs. (a) to (h), respectively, for warrants and applications; service of warrants and apprehension, and copies for persons apprehended; places of confinement, provision for transportation, food, shelter, etc., and supervision; preliminary hearing, rights of detainee, evidence, orders and reports of hearing officer, and appointment of preliminary hearing officers; receipt of additional information upon request of detainee, and revocation or modification of detention order; presentation of evidence in case of Board or court review and right to withhold certain information; regulations by Attorney General and exclusion of forced labor and confinement with criminals; and bimonthly reports to President and Congress during emergency.

Section 815, act Sept. 23, 1950, ch. 1024, title II, § 105, 64 Stat. 1023, related to the Detention Review Board, providing in subsecs. (a) to (d), respectively, for creation of Board, membership, terms, designation of Chairman, and removal; Board divisions, vacancies, powers of remaining members, quorums, official seal, and judicial notice thereof; reports to Congress and its contents; and dissolution upon termination of emergency, release of detainees, conclusion of proceedings, and subsequent establishment.

Section 816, act Sept. 23, 1950, ch. 1024, title II, § 106, 64 Stat. 1024, related to salaries of Board members, other personnel, use of agencies and services, expenses, and appropriations.

Section 817, act Sept. 23, 1950, ch. 1024, title II, § 107, 64 Stat. 1024, specified the District of Columbia as Board headquarters and related to meetings and hearings outside the District.

Section 818, act Sept. 23, 1950, ch. 1024, title II, § 108, 64 Stat. 1024, related to rules and regulations by the Board and applicability of the Administrative Procedure Act.

Section 819, act Sept. 23, 1950, ch. 1024, title II, § 109, 64 Stat. 1025, related to powers and duties of Board, providing in subsecs. (a) to (j), respectively, for review of, and action on, orders and claims, and determination of security risks; time for hearing on petition for review, the notice and place; information which may be given to detainee in review cases; subpenas, oaths, affirmations, witnesses, evidence, aid of courts, and contempt; service of papers, fees and mileage, and information from other Government agencies; rights of detainee at hearing; consideration of confidential evidence, reduction of evidence to writing, and additional testimony, and argument; evidentiary matters considered in deciding questions as to security risks; necessity for reasonable ground for belief, and claims for indemnity and receipt of evidence having probative value.

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 subsecs. (a) to (e), 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.

(Sept. 23, 1950, ch. 1024, title III, § 301, as added Pub. L. 88–290, Mar. 26, 1964, 78 Stat. 168.)

§ 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 cryptologic 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 cryptologic 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 a 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.

(Sept. 23, 1950, ch. 1024, title III, § 302, as added Pub. L. 88–290, Mar. 26, 1964, 78 Stat. 168.)

CODIFICATION

In subsec. (b), ''sections 7512 and 7532 of title 5'' substituted for ''section 14 of the Act of June 27, 1944, chapter 287, as amended (5 U.S.C. 863), section 1 of the Act of August 26, 1950, chapter 803, as amended (5 U.S.C. 22–1)'' 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. Sections 7511 and 7512 (which related to adverse actions against preference eligible employees and comprised subchapter II of chapter 75) were repealed by Pub. L. 95–454 and replaced by a new subchapter II (§§ 7511–7514) of chapter 75 (relating to removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less).

§ 833. Repealed. Pub. L. 104–201, div. A, title XVI, § 1633(b)(2), Sept. 23, 1996, 110 Stat. 2751

Section, act Sept. 23, 1950, ch. 1024, title III, § 303, as added Mar. 26, 1964, Pub. L. 88–290, 78 Stat. 169; amended Oct. 27, 1972, Pub. L. 92–596, § 7, 86 Stat. 1318; Oct. 21, 1977, Pub. L. 95–140, § 3(c), 91 Stat. 1173; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Oct. 1, 1986, Pub. L. 99–433, title I, § 110(h)(3), 100 Stat. 1004, related to termination of employment.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of Title 10, Armed Forces.

§ 834. "Classified information" defined

For the purposes of this section, the term ''classified information'' means information which, for reasons of national security, is specifically designated by a United States Government agency for limited or restricted dissemination or distribution.

(Sept. 23, 1950, ch. 1024, title III, § 304, as added Pub. L. 88–290, Mar. 26, 1964, 78 Stat. 170.)

§ 835. Nonapplicability of administrative procedure provisions

Subchapter II of chapter 5, and chapter 7, of title 5, shall not apply to the use or exercise of any authority granted by this subchapter.

(Sept. 23, 1950, ch. 1024, title III, § 305, as added Pub. L. 88–290, Mar. 26, 1964, 78 Stat. 170.)

CODIFICATION

''Subchapter II of chapter 5, and chapter 7, of title 5'' substituted in text for ''the Administrative Procedure Act, 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.

SUBCHAPTER IV—COMMUNIST CONTROL

§ 841. Findings and declarations of fact

The Congress finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. Its members have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike political parties, the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed.

(Aug. 24, 1954, ch. 886, § 2, 68 Stat. 775.)

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.

SHORT TITLE

For short title of this subchapter as the ''Communist Control Act of 1954'', see section 1 of act Aug. 24, 1954, set out as a note under section 781 of this title.

SEPARABILITY

Section 12 of act Aug. 24, 1954, 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 remainder of the title and the application of such provisions to other persons or circumstances, shall not be affected thereby.''

The use of the word ''Act'', in place of the word ''title'' as used in section 12 of act of Aug. 24, 1954, quoted above, was probably intended, since that act is not divided into titles.

§ 842. Proscription of Communist Party, its successors, and subsidiary organizations

The Communist Party of the United States, or any successors of such party regardless of the assumed name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force and violence, are not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision 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.]

(Aug. 24, 1954, ch. 886, § 3, 68 Stat. 776.)

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 as 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.

(Aug. 24, 1954, ch. 886, § 4, 68 Stat. 776.)

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, messenger, 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.

(Aug. 24, 1954, ch. 886, § 5, 68 Stat. 776.)

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.

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 person 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 civilian, military, or police service or employment with the United States Government, the governments of the several States, their political subdivisions, the District of Columbia, the Territories, or the Canal Zone;

(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 officer, 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[1] 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; or

(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 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.

§ 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.

(Aug. 1, 1956, ch. 849, § 4, 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.

§ 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 make[1] 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 4 of title II of the Immigration and Nationality Act [8 U.S.C. 1221 et seq.].

[1] So in original. Probably should not be capitalized.

[1] So in original. Probably should be ''makes''.

(Aug. 1, 1956, ch. 849, § 6, 70 Stat. 900; Pub. L. 104–208, div. C, title III, § 308(g)(9)(B), Sept. 30, 1996, 110 Stat. 3009–624.)

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.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–208 substituted ''chapter 4 of title II of the Immigration and Nationality Act'' for ''chapter 5, title II, of the Immigration and Nationality Act (66 Stat. 163)''.

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.

(Aug. 1, 1956, ch. 849, § 10, as added Pub. L. 87–845, § 13, Oct. 18, 1962, 76A Stat. 700.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(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 414 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 24—NATIONAL DEFENSE FACILITIES

§§ 881 to 887. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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. 593; Aug. 3, 1956, ch. 939, title IV, § 414, 70 Stat. 1018; Aug. 29, 1957, Pub. L. 85–215, § 2, 71 Stat. 490; Pub. L. 85–685, title VI, § 602, Aug. 20, 1958, 72 Stat. 665, related to acquisition and construction of defense facilities. See section 18233 of Title 10 and Codification note thereunder. Acts Aug. 9, 1955, ch. 662, § 1(a), (b), 69 Stat. 593; Aug. 3, 1956, ch. 939, title IV, § 414, 70 Stat. 1018; Aug. 29, 1957, Pub. L. 85–215, § 2, 71 Stat. 490, were repealed by Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569, 1570.

Section 883, acts Sept. 11, 1950, ch. 945, § 4, 64 Stat. 830; Aug. 9, 1955, ch. 662, § 1(c)–(e), 69 Stat. 593, related to location of facilities, change of location of units, title and maintenance of facilities, and to use of Federal and State facilities. See sections 18233, 18236, and 18238 of Title 10. Act Aug. 9, 1955, ch. 662, § 1(c)–(e), 69 Stat. 593, was repealed by Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569.

Section 884, act Sept. 11, 1950, ch. 945, § 5, 64 Stat. 831, authorized Secretary of Defense to delegate his authority under this chapter. See section 18233 of Title 10.

Section 885, acts Sept. 11, 1950, ch. 945, § 6, 64 Stat. 831; Aug. 9, 1955, ch. 662, § 1(f), 69 Stat. 594, related to supervision of construction, expansion, rehabilitation or conversion of facilities. See section 18237 of Title 10. Act Aug. 9, 1955, ch. 662, § 1(f), 69 Stat. 594, was repealed by Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569.

Section 886, acts Sept. 11, 1950, ch. 945, § 7, 64 Stat. 831; Aug. 9, 1955, ch. 662, § 1(g), (h), 69 Stat. 594, defined terms used in sections 881 to 887 of this title. See section 18232 of Title 10. Act Aug. 9, 1955, ch. 662, § 1(g), (h), 69 Stat. 594, was repealed by Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569.

Section 887, act Sept. 11, 1950, ch. 945, § 8, 64 Stat. 832, authorized appropriations to carry out purposes of this chapter.

CHAPTER 25—ARMED FORCES RESERVE

§§ 901 to 905. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 901, act July 9, 1952, ch. 608, pt. I, § 101, 66 Stat. 481, defined terms used in this chapter. See sections 101 and 10207 of Title 10, Armed Forces.

Section 902, act July 9, 1952, ch. 608, pt. VIII, § 809, 66 Stat. 509, related to savings provisions for laws relating to appointment in reserve components.

Section 903, act July 9, 1952, ch. 608, pt. VIII, § 810, 66 Stat. 509, related to accrued rights.

Section 904, act July 9, 1952, ch. 608, pt. VIII, § 811, 66 Stat. 509, related to authority to order reservists to active duty and the responsibilities and functions of Chief of National Guard Bureau.

Section 905, act July 9, 1952, ch. 608, pt. VIII, § 812, 66 Stat. 509, related to retroactive pay.

§§ 921 to 935. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 921, 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 102 of Title 32, National Guard.

Section 922, act July 9, 1952, ch. 608, pt. II, §202, 66 Stat. 482, enumerated reserve components. See section 10101 of Title 10, Armed Forces.

Section 923, 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 924, act July 9, 1952, ch. 608, pt. II, §204, 66 Stat. 483, provided for composition of reserve components. See section 10141 of Title 10, Armed Forces.

Section 925, acts July 9, 1952, ch. 608, pt. II, §205, 66 Stat. 483; Aug. 9, 1955, ch. 665, §2(a), 69 Stat. 598, prescribed composition and maximum strength of Ready Reserve. See section 10142 of Title 10. Act Aug. 9, 1955, ch. 665, §2(a), 69 Stat. 598 was repealed by Pub. L. 85–861, §36A, Sept. 2, 1958, 72 Stat. 1569.

Section 926, act July 9, 1952, ch. 608, pt. II, §206, 66 Stat. 483, related to Standby Reserve, its composition, and for ordering units to active duty. See sections 10151 and 12306 of Title 10.

Section 927, act July 9, 1952, ch. 608, pt. II, §207, 66 Stat. 483, related to Retired Reserve, its composition, establishment of reserve retired lists, ordering members into active duty. See sections 1376, 10154, and 12307 of Title 10.

Section 928, acts July 9, 1952, ch. 608, pt. II, §208, 66 Stat. 484; Aug. 9, 1955, ch. 665, §2(b) to (d), 69 Stat. 598, 599, related to term of service in Ready Reserve, placement, requests for assignment, training duty, extension of membership, transfer to Standby Reserve, applications for transfer and screening of units and members. See sections 10145 to 10150 of Title 10. Act Aug. 9, 1955, ch. 665, §2(b)–(d), 69 Stat. 598, was repealed by Pub. L. 85–861, §36A, Sept. 2, 1958, 72 Stat. 1569.

Section 929, act July 9, 1952, ch. 608, pt. II, §209, 66 Stat. 484, related to transferees, enlistment or appointment in Armed Forces. See sections 12104 and 12208 of Title 10.

Section 930, act July 9, 1952, ch. 608, pt. II, §210, 66 Stat. 485, related to composition of Standby Reserve. See section 10141 of Title 10.

Section 931, act July 9, 1952, ch. 608, pt. II, §211, 66 Stat. 485, provided for inactive status list in Standby Reserve, regulations governing transfer, limitation on benefits. See sections 10152, 10153, and 12734 of Title 10.

Section 932, act July 9, 1952, ch. 608, pt. II, §212, 66 Stat. 485, prescribed status of members of reserve components. See section 10141 of Title 10.

Section 933, act July 9, 1952, ch. 608, pt. II, §213, 66 Stat. 485, related to retention of status of members of reserve components, and to honorary status.

Section 934, 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 935, 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.

§936. Repealed. Sept. 3, 1954, ch. 1257, title VII, §702(d), 68 Stat. 1189

Section, act July 9, 1952, ch. 608, pt. II, §216, 66 Stat. 486, related to promotion and precedence.

ADDITIONAL REPEAL

Section was also repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641.

§§941 to 956. Repealed. Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641

Section 941, acts July 9, 1952, ch. 608, pt. II, §217, 66 Stat. 486; July 30, 1956, ch. 789, §4(a), 70 Stat. 729, related to qualifications for appointments and enlistments in the Reserves. See sections 12102, 12201, and 12204 of Title 10, Armed Forces. Act July 30, 1956, ch. 789, §4(a), 70 Stat. 729, was repealed by Pub. L. 85–861, §36A, Sept. 2, 1958, 72 Stat. 1570.

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 944, act July 9, 1952, ch. 608, pt. II, §220, 66 Stat. 487, related to appointments in warrant officer grades. See section 12241 of Title 10.

Section 945, act July 9, 1952, ch. 608, pt. II, §221, 66 Stat. 487, related to tenure of appointments of commissioned officers. See section 12203 of Title 10.

Section 946, act July 9, 1952, ch. 608, pt. II, §222, 66 Stat. 487, provided for a common Federal appointment for officers. See section 12201(a) of Title 10.

Section 947, act July 9, 1952, ch. 608, pt. II, §223, 66 Stat. 487, prescribed tenure of appointments of warrant officers. See section 12241 of Title 10.

Section 948, act July 9, 1952, ch. 608, pt. II, §224, 66 Stat. 487, provided for indefinite term of appointment, conversion of appointments and enlistments. See sections 12203 and 12241 of Title 10 and note set out under section 12203 of Title 10.

Section 949, act July 9, 1952, ch. 608, pt. II, §225, 66 Stat. 488, provided for physical examinations. See section 12644 of Title 10.

Section 950, act July 9, 1952, ch. 608, pt. II, §226, 66 Stat. 488, provided for discharge or transfer of physically disqualified personnel. See section 12644 of Title 10.

Section 951, act July 9, 1952, ch. 608, pt. II, §227, 66 Stat. 488, related to term of enlistment. See section 12103 of Title 10.

Section 952, act July 9, 1952, ch. 608, pt. II, §228, 66 Stat. 488, related to common Federal enlistments. See sections 12102 and 12107 of Title 10.

Section 953, act July 9, 1952, ch. 608, pt. II, §229, 66 Stat. 488, prohibited dual membership in reserve components. See section 10213 of Title 10.

Section 954, act July 9, 1952, ch. 608, pt. II, §230, 66 Stat. 489, related to enlisted personnel as officer candidates. See section 12209 of Title 10.

Section 955, act July 9, 1952, ch. 608, pt. II, §231, 66 Stat. 489, related to age limitation for officers.

Section 956, act July 9, 1952, ch. 608, pt. II, §232, 66 Stat. 489, authorized appointment or enlistment of limited-service personnel. See sections 12102 and 12201 of Title 10.

§§961 to 967. Repealed. Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641

Section 961, acts July 9, 1952, ch. 608, pt. II, §233, 66 Stat. 489; Aug. 9, 1955, ch. 665, §2(e)–(g), 69 Stat. 599, related to liability of members for active duty, limitation on recall, annual training, voluntary active duty, notification prior to active-duty orders, utilization of officers, protection of members of organized units, and to ministers of religion. See sections 12102, 12201, 12204, 12301, 12302, 12317, and 12682 of Title 10, Armed Forces. Act Aug. 9, 1955, ch. 665, §2(e)–(g), 69 Stat. 599, was repealed by Pub. L. 85–861, §36A, Sept. 2, 1958, 72 Stat. 1569.

Section 962, act July 9, 1952, ch. 608, pt. II, §234, 66 Stat. 490, related to active duty in connection with Reserve training and administration. See sections 12301 and 12310 of Title 10.

Section 963, act July 9, 1952, ch. 608, pt. II, §235, 66 Stat. 491, provided for active duty agreements, involuntary release, obligation to serve full term, prior obligated or involuntary service, uniformity of agreements. See sections 12311 and 12312 of Title 10.

Section 964, act July 9, 1952, ch. 608, pt. II, §236, 66 Stat. 491, provided for continuation of active duty. See section 12311 of Title 10.

Section 965, act July 9, 1952, ch. 608, pt. II, §237, 66 Stat. 492, authorized detail or assignment to duties authorized for regulars. See section 12314 of Title 10.

Section 966, act July 9, 1952, ch. 608, pt. II, §238, 66 Stat. 492, related to maintenance of Reserve forces in time of partial mobilization. See section 10207 of Title 10.

Section 967, act July 9, 1952, ch. 608, pt. II, §239, 66 Stat. 492, provided for release from active duty. See section 12313 of Title 10.

§§ 971 to 975. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 971, act July 9, 1952, ch. 608, pt. II, §240, 66 Stat. 492, provided for active duty with or without pay. See section 12315 of Title 10, Armed Forces.

Section 972, act July 9, 1952, ch. 608, pt. II, §241, 66 Stat. 492, related to pay and allowances of persons retained beyond the term of service. See section 12315 of Title 10.

Section 973, act July 9, 1952, ch. 608, pt. II, §242, 66 Stat. 492, related to pay for officer candidates. See section 12209 of Title 10.

Section 974, act July 9, 1952, ch. 608, pt. II, §243, 66 Stat. 492, related to uniform allowances. See sections 415 to 419 of Title 37, Pay and Allowances of the Uniformed Services.

Section 975, act July 9, 1952, ch. 608, pt. II, §245, 66 Stat. 494, provided for continuation of existing benefits.

§§ 981, 982. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 981, act July 9, 1952, ch. 608, pt. II, §246, 66 Stat. 495, related to civil status of reservists. See section 502 of Title 5, Government Organization and Employees.

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.

§§ 991, 992. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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 12681 and 12682 of Title 10, Armed Forces.

Section 992, act July 9, 1952, ch. 608, pt. II, §249, 66 Stat. 495, related to limitation on discharges, dropping from rolls, and character of discharge. See sections 12683 to 12686 of Title 10.

§§ 1001 to 1010. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 1001, act July 9, 1952, ch. 608, pt. II, §250, 66 Stat. 495, prohibited discrimination between Regulars and reserve components. See section 10209 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 1004, act July 9, 1952, ch. 608, pt. II, §253, 66 Stat. 496, related to support of reserve components. See section 12501 of Title 10.

Section 1005, act July 9, 1952, ch. 608, pt. II, §254, 66 Stat. 496, related to boards, membership of boards, seniority. See section 12643 of Title 10.

Section 1006, act July 9, 1952, ch. 608, pt. II, §255, 66 Stat. 496, related to availability of supplies, equipment, and facilities. See section 18502 of Title 10.

Section 1007, act July 9, 1952, ch. 608, pt. II, §256, 66 Stat. 496, provided for responsibility for Reserve affairs. See sections 10203 and 18501 of Title 10.

Section 1008, act July 9, 1952, ch. 608, pt. II, §257(a)–(d), 66 Stat. 497, related to creation, composition and representation on the Reserve Forces Policy Board, provided that the Board should be the principal policy adviser to the Secretary of Defense. See section 10301 of Title 10. Subsec. (e) of section 257 of act July 9, 1952, as amended Sept. 3, 1954, ch. 1257, title VII, §702(c), 68 Stat. 1189, was restated in section 133 [now 113] of Title 10.

Section 1009, act July 9, 1952, ch. 608, pt. II, §258, 66 Stat. 498, related to personnel records. See section 10204 of Title 10.

Section 1010, act July 9, 1952, ch. 608, pt. II, §259, 66 Stat. 498, related to dissemination of information. See section 10210 of Title 10.

§§ 1011, 1012. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1011, act July 9, 1952, ch. 608, pt. II, §260, as added Aug. 9, 1955, ch. 665, §2(h), 69 Stat. 599, related to records of persons participating in active and inactive duty training. See section 10204 of Title 10, Armed Forces.

Section 1012, act July 9, 1952, ch. 608, pt. II, §261, as added Aug. 9, 1955, ch. 665, §2(i), 69 Stat. 600, related to period of enlistment in Reserve components. See section 12103 of Title 10.

§ 1013. Repealed. Pub. L. 88–110, § 1, Sept. 3, 1963, 77 Stat. 134

Section, act July 9, 1952, ch. 608, pt. II, §262, as added Aug. 9, 1955, ch. 665, §2(i), 69 Stat. 600; amended Apr. 23, 1956, ch. 209, §1, 70 Stat. 115; July 17, 1959, Pub. L. 86–96, 73 Stat. 221; July 12, 1960, Pub. L. 86–632, §2, 74 Stat. 468, authorized President to accept enlistments in the Ready Reserve, to maintain them at a level necessary for national defense, of persons not having attained age 18, and six months and who had not been ordered to report for induction, or who possessed critical skills and were engaged in defense industry, fixed period of enlistment at eight years with active duty therein for three to six months, deferred such persons from universal military training, and required National Security 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, §263, as added Aug. 9, 1955, ch. 665, §2(i), 69 Stat. 602, 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.

§ 1015. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section, act July 9, 1952, ch. 608, pt. II, §264, as added Apr. 23, 1956, ch. 209, §2, 70 Stat. 115, related to training period and to eligibility for benefits. See sections 3687, 3721, 6148, 8687, and 8721 of Title 10, Armed Forces.

§ 1016. Repealed. Pub. L. 87–651, title III, § 307A, Sept. 7, 1962, 76 Stat. 526

Section, act July 9, 1952, ch. 608, pt. II, §265, as added July 9, 1956, ch. 534, 70 Stat. 517; amended Sept. 2, 1958, Pub. L. 85–857, §13(r), 72 Stat. 1266; Sept. 21, 1959, Pub. L. 86–324, §1, 73 Stat. 596; June 28, 1962, Pub. L. 87–509, §1, 76 Stat. 120, provided for a lump-sum readjustment

payment for involuntary release from active duty. See section 12686 of Title 10, Armed Forces.

Pub. L. 87–509, §1, June 28, 1962, 76 Stat. 120, was repealed by Pub. L. 89–718, §75(4), Nov. 2, 1966, 80 Stat. 1124.

§§ 1021 to 1024. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 1021, act July 9, 1952, ch. 608, pt. III, §301, 66 Stat. 498, established National Guard and Army Reserve as reserve components of the Army. See section 3062 of Title 10, Armed Forces.

Section 1022, act July 9, 1952, ch. 608, pt. III, §302, 66 Stat. 498, redesignated Organized Reserve Corps as Army Reserve.

Section 1023, act July 9, 1952, ch. 608, pt. III, §303, 66 Stat. 498, related to composition of Army Reserve. See section 10104 of Title 10.

Section 1024, act July 9, 1952, ch. 608, pt. III, §304, 66 Stat. 498, related to women in Army Reserve.

§§ 1041 to 1053. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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 1042, act July 9, 1952, ch. 608, pt. IV, §402, 66 Stat. 498, established Marine Corps Reserve as reserve component of Marine Corps. See section 10109 of Title 10.

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 1045, act July 9, 1952, ch. 608, pt. IV, §405, 66 Stat. 498, provided for integration of Marine Corps Reserve. See section 10109 of Title 10.

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 10304 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 Naval Reserve yacht pennant and enumerated class of vessels which may fly such pennant. See section 7226 of Title 10.

Section 1050, act July 9, 1952, ch. 608, pt. IV, §411, 66 Stat. 499, related to appointment and duty of temporary officers in Naval Reserve and Marine Corps Reserve. See section 603 of Title 10.

Section 1051, act July 9, 1952, ch. 608, pt. IV, §412, 66 Stat. 499, related to temporary members of Coast Guard Reserve.

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 Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve. See section 762 of Title 14, Coast Guard.

§§ 1071 to 1074. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 1071, act July 9, 1952, ch. 608, pt. V, §501, 66 Stat. 500, prescribed composition of Naval Militia. See section 7851 of Title 10, Armed Forces.

Section 1072, act July 9, 1952, ch. 608, pt. V, §502, 66 Stat. 500, provided for appointment and enlistment of militia members in Naval Reserve or Marine Corps Reserve. See section 7852 of Title 10.

Section 1073, act July 9, 1952, ch. 608, pt. V, §503, 66 Stat. 500, provided for release from militia duty upon order to active duty in service of United States. See section 7853 of Title 10.

Section 1074, act July 9, 1952, ch. 608, pt. V, §504, 66 Stat. 500, related to availability of supplies and equipment. See section 7854 of Title 10.

§§ 1091 to 1093. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 1091, act July 9, 1952, ch. 608, pt. VI, §601, 66 Stat. 501, provided that Air National Guard and Air Force Reserve are reserve components of Air Force. See section 8062 of Title 10, Armed Forces.

Section 1092, act July 9, 1952, ch. 608, pt. VI, §602, 66 Stat. 501, provided for composition of Air Force Reserve. See section 10110 of Title 10.

Section 1093, act July 9, 1952, ch. 608, pt. VI, §603, 66 Stat. 501, related to women in Air Force Reserve.

§§ 1111 to 1124. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

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 1112, act July 9, 1952, ch. 608, pt. VII, §702, 66 Stat. 501, related to composition of National Guard and Air National Guard. See sections 101, 10105, and 10111 of Title 10, Armed Forces, and section 101 of Title 32, National Guard.

Section 1113, act July 9, 1952, ch. 608, pt. VII, §703, 66 Stat. 502, related to Federal recognition and appointments. See sections 12211 and 12212 of Title 10, Armed Forces, and sections 301, 307 of Title 32, National Guard.

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 12105, 12213, and 12214 of Title 10, Armed Forces, and section 323 of Title 32, National Guard.

Section 1117, act July 9, 1952, ch. 608, pt. VII, §707, 66 Stat. 503, provided for automatic transfers. See sections 12106, 12213, and 12214 of Title 10, Armed Forces.

Section 1118, acts July 9, 1952, ch. 608, pt. VII, §708, 66 Stat. 503; Sept. 3, 1954, ch. 1257, title VII, §702(e), 68 Stat. 1189, permitted warrant officers and enlisted members of National Guard and of Air National Guard of United States to hold appointments as Reserve commissioned officers of Army or of Air Force, provided for determination of their status.

Section 1119, act July 9, 1952, ch. 608, pt. VII, §709, 66 Stat. 503, provided for training in State status. See sections 10107, 10113, and 12401 of Title 10.

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 1121, act July 9, 1952, ch. 608, pt. VII, § 711, 66 Stat. 504, related to relief from liability for issued United States property. See section 704 of Title 32.

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 12404 of Title 10, Armed Forces, and sections 325 and 706 of Title 32, National Guard.

Section 1123, act July 9, 1952, ch. 608, pt. VII, § 713, 66 Stat. 504, related to Federal status of personnel ordered to active duty. See sections 12211, 12212, and 12403 of Title 10, Armed Forces.

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.

§ 1125. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section, act July 9, 1952, ch. 608, pt. VII, § 715, as added July 30, 1956, ch. 789, § 4(b), 70 Stat. 729, related to applicability of laws to female officers, their dependents and beneficiaries and to determination of dependency.

CHAPTER 26—GIFTS FOR DEFENSE PURPOSES

§§ 1151 to 1156. Repealed. Pub. L. 101–403, title II, § 202(b), Oct. 1, 1990, 104 Stat. 874

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 1153, act July 27, 1954, ch. 582, § 3, 68 Stat. 566, established a special account in the Treasury for depositing gifts.

Section 1154, act July 27, 1954, ch. 582, § 4, 68 Stat. 566, directed Secretary of the Treasury to pay to various appropriation accounts 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

§§ 1181, 1182. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1181, act Sept. 3, 1954, ch. 1257, title I, § 102, 68 Stat. 1149, defined terms used in the Reserve Officer Personnel Act of 1954. 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. 1189, contained savings provisions. See section 723 of Title 14.

§§ 1191 to 1202. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1191, acts Sept. 3, 1954, ch. 1257, title II, § 201, 68 Stat. 1150; June 30, 1955, ch. 247, § 1(a), 69 Stat. 218, related to constructive service credit on initial appointment. See section 12207 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 732 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 1194, act Sept. 3, 1954, ch. 1257, title II, § 204, 68 Stat. 1151, authorized retention of officers with incomplete reserve service. See section 12645 of Title 10, Armed Forces.

Section 1195, acts Sept. 3, 1954, ch. 1257, title II, § 205, 68 Stat. 1151; June 30, 1955, ch. 247, § 1(b), 69 Stat. 218, related to retention of officers with eighteen or more years of service. See section 12646 of Title 10.

Section 1196, act Sept. 3, 1954, ch. 1257, title II, § 206, 68 Stat. 1152, provided for advancement in grade on retirement or transfer to Retired Reserve. See sections 12771 to 12773 of Title 10.

Section 1197, act Sept. 3, 1954, ch. 1257, title II, § 207, 68 Stat. 1152, related to grade on entry upon active duty. See section 12320 of Title 10, Armed Forces, and section 745 of Title 14, Coast Guard.

Section 1198, act Sept. 3, 1954, ch. 1257, title II, § 208, 68 Stat. 1152, provided for recommendation for promotion of officer previously removed from active status. See section 14317 of Title 10, Armed Forces, and section 733 of Title 14, Coast Guard.

Section 1199, act Sept. 3, 1954, ch. 1257, title II, § 209, 68 Stat. 1152, authorized the President to suspend provisions of Reserve Officer Personnel Act of 1954 in time of war or national emergency. See section 123 of Title 10, Armed Forces, section 722 of Title 14, Coast Guard, and section 111 of Title 32, National Guard.

Section 1200, act Sept. 3, 1954, ch. 1257, title II, § 210, 68 Stat. 1152, provided that there shall be no requirement for sea or foreign service for promotion of Reserve officers. See section 779 of Title 14, Coast Guard.

Section 1201, act Sept. 3, 1954, ch. 1257, title II, § 211, 68 Stat. 1153, related to grades of Reserve officers. See section 12202 of Title 10, Armed Forces.

Section 1202, act Sept. 3, 1954, ch. 1257, title II, § 212, 68 Stat. 1153, related to active status of officers assigned to Selective Service System. See section 12647 of Title 10, Armed Forces, and section 740 of Title 14, Coast Guard.

§§ 1221 to 1227. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1221, act Sept. 3, 1954, ch. 1257, title III, § 301, 68 Stat. 1153, provided that sections 1221 to 1281 should apply only to Reserve officers of the Army.

Section 1222, acts Sept. 3, 1954, ch. 1257, title III, § 302, 68 Stat. 1153; June 30, 1955, ch. 247, § 6, 69 Stat. 221, defined terms used in sections 1221 to 1281 of this title. See section 12007 of Title 10, Armed Forces.

Section 1223, acts Sept. 3, 1954, ch. 1257, title III, § 303, 68 Stat. 1154; June 30, 1955, ch. 247, § 7, 69 Stat. 221, provided for promotion procedures. See sections 14101 et seq. and 14301 et seq. of Title 10.

Section 1224, act Sept. 3, 1954, ch. 1257, title III, § 304, 68 Stat. 1154, related to maximum grades for female officers.

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 1226, act Sept. 3, 1954, ch. 1257, title III, § 306, 68 Stat. 1155, related to minimum service in grade. See section 14303 of Title 10.

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 12003 to 12005, 12007, and 12646 of Title 10.

§§ 1231 to 1238. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

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 12009 and 14301 et seq. of Title 10.

Section 1234, act Sept. 3, 1954, ch. 1257, title III, § 311, 68 Stat. 1157, related to second consideration for promotion. See section 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 field grades 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 1237, acts Sept. 3, 1954, ch. 1257, title III, § 314, 68 Stat. 1158; June 30, 1955, ch. 247, § 8, 69 Stat. 222, related to method of selection and order of promotion. 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.

§§ 1241 to 1243. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

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.

§§ 1251 to 1255. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1251, act Sept. 3, 1954, ch. 1257, title III, § 319, 68 Stat. 1160, related to examination for Federal recognition upon unit vacancy promotion. See section 309 of Title 32, National Guard.

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 32.

Section 1253, act Sept. 3, 1954, ch. 1257, title III, § 321, 68 Stat. 1160, provided for promotion to higher grade upon recognition. See section 14308(f) 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 12213 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.

§§ 1261 to 1264. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1261, act Sept. 3, 1954, ch. 1257, title III, § 324, 68 Stat. 1161, related to discharge of second lieutenants. See sections 14503 and 14907 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 14501 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 14508 to 14512 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.

§ 1265. Omitted

CODIFICATION

Section, act Sept. 3, 1954, ch. 1257, title III, § 328, 68 Stat. 1163, which provided for retention of officers to complete 20 years of service.

§§ 1266, 1267. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1266, act Sept. 3, 1954, ch. 1257, title III, § 329, 68 Stat. 1163, related to disposition of general officers ceasing to occupy position. See section 14314(a) of Title 10, Armed Forces.

Section 1267, act Sept. 3, 1954, ch. 1257, title III, § 330, 68 Stat. 1163, related to excess numbers in grade. See sections 14514 and 14704 of Title 10.

§§ 1271 to 1279. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1271, act Sept. 3, 1954, ch. 1257, title III, § 331, 68 Stat. 1164, related to applicability of sections 1221 to 1227, 1231 to 1238, and 1261 to 1267 of this title. See section 14301 et seq. of Title 10, Armed Forces.

Section 1272, act Sept. 3, 1954, ch. 1257, title III, § 332, 68 Stat. 1164, related to officers eligible for vacancy promotion entering on active duty. See section 14301 et seq. of Title 10.

Section 1273, acts Sept. 3, 1954, ch. 1257, title III, § 333, 68 Stat. 1164; June 30, 1955, ch. 247, §§ 2, 10, 69 Stat. 218, 222, provided for promotion to higher grade while on active duty. See section 14311 of Title 10.

Section 1274, act Sept. 3, 1954, ch. 1257, title III, § 334, 68 Stat. 1164, provided for promotion under mandatory consideration of officers with higher temporary grade. See section 14301 et seq. of Title 10.

Section 1275, act Sept. 3, 1954, ch. 1257, title III, § 335, 68 Stat. 1165, related to appointment in appropriate higher grade after temporary appointment. See section 14301 et seq. of Title 10.

Section 1276, act Sept. 3, 1954, ch. 1257, title III, § 336, 68 Stat. 1165, related to officers of the National Guard of the United States. See section 14301 et seq. of Title 10.

Section 1277, act Sept. 3, 1954, ch. 1257, title III, § 337, 68 Stat. 1165, which related to withholding promotion on release from active duty, was also repealed by act June 30, 1955, ch. 247, § 11, 69 Stat. 222.

Section 1278, act Sept. 3, 1954, ch. 1257, title III, § 338, 68 Stat. 1165, related to promotion upon release from active duty. See section 14301 et seq. of Title 10.

Section 1279, acts Sept. 3, 1954, ch. 1257, title III, § 339, 68 Stat. 1165; June 30, 1955, ch. 247, § 1(c), 69 Stat. 218, related to retention for additional service.

§ 1281. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section, act Sept. 3, 1954, ch. 1257, title III, § 340, 68 Stat. 1166, related to assimilation of regulations relating to promotion.

§§ 1301 to 1314. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1301, act Sept. 3, 1954, ch. 1257, title IV, § 401, 68 Stat. 1166, related to applicability of sections 1301 to 1314 of this title, and defined terms.

Section 1302, acts Sept. 3, 1954, ch. 1257, title IV, § 402, 68 Stat. 1166; June 30, 1955, ch. 247, § 3(a), 69 Stat. 218, provided for authorized numbers and distribution of officers in the Naval Reserve. See sections 12003 to 12005 and 14001 et seq. of Title 10, Armed Forces.

Section 1303, acts Sept. 3, 1954, ch. 1257, title IV, § 403, 68 Stat. 1167; June 30, 1955, ch. 247, § 3(b), 69 Stat. 218, related to applicability of laws relating to selection for promotion of Regular officers. See sections 14001 et seq., 14101 et seq., 14307, and 14501 et seq. of Title 10.

Section 1304, act Sept. 3, 1954, ch. 1257, title IV, § 404, 68 Stat. 1167, provided for running mates. See section 14306 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. and 14308 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 1310, act Sept. 3, 1954, ch. 1257, title IV, § 410, 68 Stat. 1169, provided for precedence.

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 1314, act Sept. 3, 1954, ch. 1257, title IV, § 414, as added June 30, 1955, ch. 247, § 3(e), 69 Stat. 219, related to promotion of Naval and Marine officers selected for promotion prior to July 1, 1955.

§§ 1331 to 1357. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1331, acts Sept. 3, 1954, ch. 1257, title V, § 501, 68 Stat. 1171; June 30, 1955, ch. 247, § 4(a), 69 Stat. 219, related to applicability of sections 1331 to 1357 of this title, and defined terms.

Section 1332, acts Sept. 3, 1954, ch. 1257, title V, § 502, 68 Stat. 1172; June 30, 1955, ch. 247, § 4(b), 69 Stat. 219, related to promotion and promotion service. See sections 14001 et seq. and 14301 et seq. of Title 10, Armed Forces.

Section 1333, act Sept. 3, 1954, ch. 1257, title V, § 503, 68 Stat. 1172, related to authorized numbers and distribution of Reserve officers of the Air Force. See sections 12003 to 12005, 12009, and 12646 of Title 10.

Section 1334, acts Sept. 3, 1954, ch. 1257, title V, § 504, 68 Stat. 1173; June 30, 1955, ch. 247, § 4(c), 69 Stat. 219, related to seniority for promotion purposes. See section 14301 et seq. of Title 10.

Section 1335, act Sept. 3, 1954, ch. 1257, title V, § 505, 68 Stat. 1173, provided for constructive service credit on appointment. See section 12201 et seq. of Title 10.

Section 1336, acts Sept. 3, 1954, ch. 1257, title V, § 506, 68 Stat. 1173; June 30, 1955, ch. 247, § 4(d), 69 Stat. 219, related to minimum service in grade. See section 14301 et seq. of Title 10.

Section 1337, act Sept. 3, 1954, ch. 1257, title V, § 507, 68 Stat. 1174, related to time limit for consideration. See section 14301 et seq. of Title 10.

Section 1338, acts Sept. 3, 1954, ch. 1257, title V, § 508, 68 Stat. 1174; June 30, 1955, ch. 247, § 4(e), 69 Stat. 219, related to selection boards. See sections 14101 et seq. and 14301 et seq. of Title 10.

Section 1339, acts Sept. 3, 1954, ch. 1257, title V, § 509, 68 Stat. 1174; June 30, 1955, ch. 247, § 4(f), 69 Stat. 219, provided for promotion to first lieutenant, and to discharge for failure to qualify for permanent grade. See sections 14301 et seq. and 14503 of Title 10.

Section 1340, acts Sept. 3, 1954, ch. 1257, title V, § 510, 68 Stat. 1174; June 30, 1955, ch. 247, § 4(g), 69 Stat. 220, related to consideration for promotion to captain, major, and lieutenant colonel. See section 14301 et seq. of Title 10.

Section 1341, acts Sept. 3, 1954, ch. 1257, title V, § 511, 68 Stat. 1175; June 30, 1955, ch. 247, § 4(h), 69 Stat. 220, provided for promotion to captain, major or lieutenant colonel. See section 14301 et seq. of Title 10.

Section 1342, act Sept. 3, 1954, ch. 1257, title V, § 512, 68 Stat. 1175, related to method of selection for promotion to captain, major, or lieutenant colonel. See section 14001 et seq. of Title 10.

Section 1343, act Sept. 3, 1954, ch. 1257, title V, § 513, 68 Stat. 1176, authorized special promotions. See section 14301 et seq. of Title 10.

Section 1344, act Sept. 3, 1954, ch. 1257, title V, § 514, 68 Stat. 1176, related to promotion of officers serving in temporary grade higher than permanent grade. See section 14301 et seq. of Title 10.

Section 1345, act Sept. 3, 1954, ch. 1257, title V, § 515, 68 Stat. 1177, related to female Reserve officers.

Section 1346, act Sept. 3, 1954, ch. 1257, title V, § 516, 68 Stat. 1177, related to promotion to colonel. See section 14301 et seq. of Title 10.

Section 1347, act Sept. 3, 1954, ch. 1257, title V, § 517, 68 Stat. 1177, provided for promotion to brigadier general and major general. See sections 14314 and 14315 of Title 10.

Section 1348, act Sept. 3, 1954, ch. 1257, title V, § 518, 68 Stat. 1178, provided for removal from the promotion list by the President. See section 14301 et seq. of Title 10.

Section 1349, act Sept. 3, 1954, ch. 1257, title V, § 519, 68 Stat. 1179, related to Air National Guard. See section 14301 et seq. of Title 10, Armed Forces, and section 307 of Title 32, National Guard.

Section 1350, act Sept. 3, 1954, ch. 1257, title V, § 520, 68 Stat. 1179, provided for promotion to first lieutenant in Air National Guard of the United States. See sections 14301 et seq. and 14503 of Title 10, Armed Forces.

Section 1351, act Sept. 3, 1954, ch. 1257, title V, § 521, 68 Stat. 1179, provided for promotion to captain, major, and lieutenant colonel in the Air National Guard. See section 14301 et seq. of Title 10.

Section 1352, act Sept. 3, 1954, ch. 1257, title V, § 522, 68 Stat. 1180, related to deferred officers. See section 14301 et seq. of Title 10, Armed Forces, and section 323 of Title 32, National Guard.

Section 1353, acts Sept. 3, 1954, ch. 1257, title V, § 523, 68 Stat. 1181; June 30, 1955, ch. 247, § 4(i), 69 Stat. 220, related to maximum ages for retention in active status. See sections 14510 to 14512 of Title 10, Armed Forces.

Section 1354, acts Sept. 3, 1954, ch. 1257, title V, § 524, 68 Stat. 1182; June 30, 1955, ch. 247, § 4(j), 69 Stat. 220, related to elimination of officers for length of service. See section 14501 et seq. of Title 10.

Section 1355, act Sept. 3, 1954, ch. 1257, title V, § 525, 68 Stat. 1183, provided for elimination of excess officers. See sections 14514 and 14704 of Title 10.

Section 1356, act Sept. 3, 1954, ch. 1257, title V, § 526, 68 Stat. 1183, provided for elimination or transfer of ad-

jutants general or assistant adjutants general. See section 14314(a), (c) of Title 10.

Section 1357, act Sept. 3, 1954, ch. 1257, title V, § 527, as added June 30, 1955, ch. 247, § 4(k), 69 Stat. 220, related to civilian employees of the Air National Guard.

§§ 1381 to 1398. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section 1381, act Sept. 3, 1954, ch. 1257, title VI, § 601, 68 Stat. 1183, defined terms used in sections 1381 to 1399 of this title. See section 720 of Title 14, Coast Guard.

Section 1382, act Sept. 3, 1954, ch. 1257, title VI, § 602, 68 Stat. 1183, related to applicability of sections 1381 to 1399 of this title. See section 721 of Title 14.

Section 1383, act Sept. 3, 1954, ch. 1257, title VI, § 603, 68 Stat. 1184, related to authorized numbers and distribution of officers in the Coast Guard Reserve. See section 724 of Title 14.

Section 1384, act Sept. 3, 1954, ch. 1257, title VI, § 604, 68 Stat. 1184, related to promotions and selection boards. See section 729 of Title 14.

Section 1385, act Sept. 3, 1954, ch. 1257, title VI, § 605, 68 Stat. 1185, provided for precedence. See section 725 of Title 14.

Section 1386, acts Sept. 3, 1954, ch. 1257, title VI, § 606, 68 Stat. 1185; June 30, 1955, ch. 247, § 5(a), 69 Stat. 221, related to running mates. See section 726 of Title 14.

Section 1387, act Sept. 3, 1954, ch. 1257, title VI, § 607, 68 Stat. 1186, related to promotion zones. See section 731 of Title 14.

Section 1388, acts Sept. 3, 1954, ch. 1257, title VI, § 608, 68 Stat. 1186; June 30, 1955, ch. 247, § 5(b), 69 Stat. 221, related to date of rank upon promotion. See section 736 of Title 14.

Section 1389, act Sept. 3, 1954, ch. 1257, title VI, § 609, 68 Stat. 1186, related to minimum points for consideration for promotion. See section 785 of Title 14.

Section 1390, act Sept. 3, 1954, ch. 1257, title VI, § 610, 68 Stat. 1186, related to qualifications for promotion. See section 734 of Title 14.

Section 1391, act Sept. 3, 1954, ch. 1257, title VI, § 611, 68 Stat. 1186, related to failure of selection and elimination. See section 740 of Title 14.

Section 1392, act Sept. 3, 1954, ch. 1257, title VI, § 612, 68 Stat. 1187, provided for removal from promotion list by the President. See section 738 of Title 14.

Section 1393, act Sept. 3, 1954, ch. 1257, title VI, § 613, 68 Stat. 1187, related to maximum ages for active status. See section 742 of Title 14.

Section 1394, act Sept. 3, 1954, ch. 1257, title VI, § 614, 68 Stat. 1187, related to type of promotion. See section 737 of Title 14.

Section 1395, act Sept. 3, 1954, ch. 1257, title VI, § 615, 68 Stat. 1188, related to promotion of officers serving on active duty. See section 728 of Title 14.

Section 1396, act Sept. 3, 1954, ch. 1257, title VI, § 616, 68 Stat. 1188, provided for appointment of former Navy and Coast Guard officers. See section 744 of Title 14.

Section 1397, act Sept. 3, 1954, ch. 1257, title VI, § 617, 68 Stat. 1188, provided for recall of retired officers. See section 746 of Title 14.

Section 1398, act Sept. 3, 1954, ch. 1257, title VI, § 618, 68 Stat. 1188, authorized the Secretary to promulgate regulations. See section 794 of Title 14.

§ 1399. Omitted

CODIFICATION

Section, act Sept. 3, 1954, ch. 1257, title VI, § 619, as added June 30, 1955, ch. 247, § 5(c), 69 Stat. 221, which authorized promotion of officers who were selected for promotion prior to July 1, 1955.

CHAPTER 28—STATUS OF ARMED FORCES PERSONNEL APPOINTED TO SERVICE ACADEMIES

§§ 1411 to 1414. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1570

Section 1411, act June 25, 1956, ch. 439, § 1, 70 Stat. 333, related to continuance of enlisted contract or period of obligated service and to pay allowance and benefits. See section 516 of Title 10, Armed Forces.

Section 1412, act June 25, 1956, ch. 439, § 2, 70 Stat. 333, related to reversion to enlisted status upon separation from the service academies. See section 516 of Title 10.

Section 1413, act June 25, 1956, ch. 439, § 3, 70 Stat. 333, related to charge against allowed number of personnel in Armed Forces.

Section 1414, act June 25, 1956, ch. 439, § 4, 70 Stat. 333, related to restriction on counting Academy service towards length of service as an officer.

CHAPTER 29—NATIONAL DEFENSE CONTRACTS

Sec.

1431. Authorization; official approval; Congressional action: notification of committees of certain proposed obligations, resolution of disapproval, continuity of session, computation of period.
1432. Restrictions.
1433. Public record; examination of records by Comptroller General; exemptions: exceptional conditions; reports to Congress.
1434. Repealed.
1435. Effective period.
1436. Repealed.

§ 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 heretofore 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 other than at the end of a Congress, are excluded in the computation of such 60-day period.

(Pub. L. 85–804, § 1, Aug. 28, 1958, 72 Stat. 972; Pub. L. 93–155, title VIII, § 807(a), Nov. 16, 1973, 87

Stat. 615; Pub. L. 101–510, div. A, title XIII, § 1313, Nov. 5, 1990, 104 Stat. 1670; Pub. L. 102–25, title VII, § 705(f), Apr. 6, 1991, 105 Stat. 120.)

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''.

Pub. L. 102–25, § 705(f)(2), in fourth sentence, inserted ''at the end of a Congress'' after ''sine die'' and '', or because of an adjournment sine die other than at the end of a Congress,'' after ''to a day certain''.

1990—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 1651(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.

EX. ORD. NO. 10789. CONTRACTING AUTHORITY OF GOVERNMENT AGENCIES IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS

Ex. Ord. No. 10789, Nov. 14, 1958, 23 F.R. 8897, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 11610, July 22, 1971, 36 F.R. 13755; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12919, § 904(b), June 3, 1994, 59 F.R. 29534; Ex. Ord. No. 13232, Oct. 20, 2001, 66 F.R. 53941; Ex. Ord. No. 13286, § 73, Feb. 28, 2003, 68 F.R. 10630, provided:

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 heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of 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, the national defense will be facilitated thereby.

1A. (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 contractor, 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 reasonable expenses of litigation and settlement) or 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 subcontractors, 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 Secretaries 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 subrogation) 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.

(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 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 invention, 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, including plans, spare parts and equipment therefor, 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 claims under contracts heretofore 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 the 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 public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the Congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

(a) name the contractor;

(b) state the actual cost or estimated potential cost involved;

(c) describe the property or services involved; and

(d) state further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

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 Assignment of Claims Act of 1940 (54 Stat. 1029), as amended [section 3727 of Title 31, Money and Finance, and section 15 of Title 41, Public Contracts].

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 bonafide employees or bonafide 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.''

11. Except as provided in 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 Title 41, Public Contracts] contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United 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. 2036), as amended [sections 35 to 45 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 2, 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 in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under 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, 1958, 72 Stat. 966 [section 252(c)(14) of Title 41, Public Contracts], 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. 441 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)[1] of title 10 or under section 252(c)(13)[1] of title 41, 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.

(Pub. L. 85–804, § 2, Aug. 28, 1958, 72 Stat. 972.)

REFERENCES IN TEXT

Section 2304 of title 10, referred to in subd. (e), was amended generally by Pub. L. 98–369 and, as so amended, does not contain a subsec. (a)(15).

Section 252(c)(13) of title 41, referred to in subd. (e), was renumbered section 252(c)(14) of Title 41, Public Contracts, by Pub. L. 85–800, § 2(b), Aug. 28, 1958, 72 Stat. 966. Subsequently, Pub. L. 98–369 amended section 252 of Title 41 by striking out subsec. (c), redesignating subsec. (e) as (c)(1), and adding subsec. (c)(2).

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 1651(a)(4) of this title.

§ 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 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. Under regulations to be prescribed by the President, however, such clause may be omitted from contracts with foreign contractors or foreign subcontractors if the agency head determines, with the concurrence of the Comptroller General of the United States or his designee, that the omission will serve the best interests of the United States. However, the concurrence of the Comptroller General of the United States or his designee is not required for the omission of such 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

[1] See References in Text note below.

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.

(Pub. L. 85–804, § 3, Aug. 28, 1958, 72 Stat. 972; Pub. L. 89–607, § 3, Sept. 27, 1966, 80 Stat. 851.)

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 section 2151 of Title 22, Foreign Relations and Intercourse], as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out under section 2393 of Title 22.

FOREIGN CONTRACTORS

Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising the authority provided in the amendment by Pub. L. 89–607 to exempt certain contracts with foreign contractors from the requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. 11 of Part I of Ex. Ord. No. 10789, and that alternate sources of supply are not reasonably available, see par. 11 of Part I of Ex. Ord. No. 10789, eff. Nov. 14, 1958, 23 F.R. 8897, as amended, set out under section 1431 of this title.

NONAPPLICABILITY OF THE 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 1651(a)(4) of this title.

§ 1434. Repealed. Pub. L. 105–362, title IX, § 901(r)(1)(A), Nov. 10, 1998, 112 Stat. 3291

Section, Pub. L. 85–804, § 4, Aug. 28, 1958, 72 Stat. 972; Pub. L. 104–66, title III, § 3001(g), Dec. 21, 1995, 109 Stat. 734, related to reports to Congress by departments and agencies acting under authority of this chapter and requirement that such reports be published in the Congressional Record.

§ 1435. Effective period

This chapter shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate.

(Pub. L. 85–804, § 4, formerly § 5, Aug. 28, 1958, 72 Stat. 973; renumbered § 4, Pub. L. 105–362, title IX, § 901(r)(1)(B), Nov. 10, 1998, 112 Stat. 3291.)

PRIOR PROVISIONS

A prior section 4 of Pub. L. 85–804 was classified to section 1434 of this title prior to repeal by Pub. L. 105–362.

NONAPPLICABILITY OF NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act [see Short Title note under section 1601 of this title] shall not apply to the powers and authorities conferred by this section and actions taken hereunder, see section 1651(a)(4) of this title.

§ 1436. Repealed. Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314

Section, Pub. L. 91–121, title IV, § 410, Nov. 19, 1969, 83 Stat. 210; Pub. L. 94–273, §§ 4(4), 5(6), 14, Apr. 21, 1976, 90 Stat. 377, 378, related to reporting requirements for former military and civilian officials employed by defense contractors and by Department of Defense employees previously employed by defense contractors.

CHAPTER 30—FEDERAL ABSENTEE VOTING ASSISTANCE

§§ 1451 to 1454. Transferred

CODIFICATION

Section 1451, acts Aug. 9, 1955, ch. 656, title I, § 101, 69 Stat. 584; June 18, 1968, Pub. L. 90–343, § 1, 82 Stat. 180, which related to State enactment of absentee voting legislation, was transferred to section 1973cc of Title 42, The Public Health and Welfare.

Section 1452, acts 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 balloting 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 1453 were formerly classified to sections 2171 to 2173 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 reports 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. 586; 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 1464, acts Aug. 9, 1955, ch. 656, title II, § 204, 69 Stat. 586; June 18, 1968, Pub. L. 90–343, § 2, 82 Stat. 181; June 18, 1968, Pub. L. 90–344, § 1(4), (5), (6), 82 Stat. 182, which related to form and content of post card application, was transferred to section 1973cc–14 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. 588, 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. 588, 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, § 308, 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 1506, Pub. L. 86–380, § 6, Sept. 24, 1959, 73 Stat. 705; Pub. L. 88–426, title III, § 306(e), Aug. 14, 1964, 78 Stat. 429; Pub. L. 89–733, §§ 3, 4, Nov. 2, 1966, 80 Stat. 1162, which related to powers of Commission and administrative provisions, was transferred to section 4276 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.

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1521a. Destruction of existing stockpile of lethal chemical agents and munitions.
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§ 1511. Repealed. Pub. L. 104–106, div. A, title X, § 1061(k), Feb. 10, 1996, 110 Stat. 443

Section, Pub. L. 91–121, title IV, § 409(a), Nov. 19, 1969, 83 Stat. 209; Pub. L. 93–608, § 2(4), Jan. 2, 1975, 88 Stat. 1971; Pub. L. 97–375, title II, § 203(a)(2), Dec. 21, 1982, 96 Stat. 1822, directed Secretary of Defense to submit an annual report to Congress on expenditures for research, development, test, and evaluation of all lethal and nonlethal chemical and biological agents.

§ 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 the open air testing of any such agent within the United States, or the 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 days 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.

(Pub. L. 91–121, title IV, § 409(b), Nov. 19, 1969, 83 Stat. 209; Pub. L. 91–441, title V, § 506(b)(1), Oct. 7, 1970, 84 Stat. 912; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

This Act, referred to in provision preceding par. (1), 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

1970—Pub. L. 91–441 inserted reference to the disposal of lethal chemical or biological warfare agents in the United States.

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. 96–88 which is classified to section 3508(b) of Title 20, Education.

RIOT CONTROL AGENTS

Pub. L. 109–163, div. A, title XII, § 1232, Jan. 6, 2006, 119 Stat. 3468, provided that:

''(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.

''(c) DEFINITIONS.—In this section:

''(1) CHEMICAL WEAPONS CONVENTION.—The term 'Chemical Weapons Convention' means the Convention on the Prohibitions of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, with annexes, done at Paris, January 13, 1993, and entered into force April 29, 1997 (T. Doc. 103–21).

''(2) RESOLUTION OF RATIFICATION OF THE CHEMICAL WEAPONS CONVENTION.—The term 'resolution of ratification of the Chemical Weapons Convention' means S. Res. 75, 105th Congress, agreed to April 24, 1997, advising and consenting to the ratification of the Chemical Weapons Convention.''

CHEMICAL MUNITIONS TRANSPORTATION FROM OKINAWA TO THE UNITED STATES

Pub. L. 91–672, § 13, Jan. 12, 1971, 84 Stat. 2055, provided that: ''No funds authorized or appropriated pursuant to this or any other law 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 HERBICIDES 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.

SEC. 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.

(Pub. L. 103–337, div. A, title I, § 143, Oct. 5, 1994, 108 Stat. 2689.)

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, 1969, 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.

(Pub. L. 91–121, title IV, § 409(c), Nov. 19, 1969, 83 Stat. 210; Pub. L. 91–441, title V, § 506(b)(2), (3), Oct. 7, 1970, 84 Stat. 912.)

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

1970—Par. (1). Pub. L. 91–441, § 506(b)(2), inserted reference to disposal of lethal chemical or biological warfare agents or delivery systems for such agents.

Par. (2). Pub. L. 91–441, § 506(b)(3), inserted reference to disposal of munitions in international waters.

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 this 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.

(Pub. L. 91–121, title IV, § 409(d), Nov. 19, 1969, 83 Stat. 210.)

§ 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.

(Pub. L. 91–121, title IV, § 409(e), Nov. 19, 1969, 83 Stat. 210.)

§ 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.

(Pub. L. 91–441, title V, § 506(a), Oct. 7, 1970, 84 Stat. 912.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 91–441, Oct. 7, 1970, 84 Stat. 912. Provisions authorizing the appropriation of funds are not classified to the Code. For complete classification of this Act to the Code, see Tables.

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.

Section is from the Armed Forces-Military Procurement, 1971 act, Pub. L. 91–441. Provisions similar to those in this section were contained in Pub. L. 91–121, title IV, § 409(f), Nov. 19, 1969, 83 Stat. 210.

§ 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.

(Pub. L. 91–121, title IV, § 409(g), as added Pub. L. 91–441, title V, § 506(b)(4), Oct. 7, 1970, 84 Stat. 912.)

§ 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.

(Pub. L. 91–441, title V, § 506(d), Oct. 7, 1970, 84 Stat. 913.)

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 disperse or otherwise disseminate any such toxic chemical.

(Pub. L. 94–106, title VIII, § 818, Oct. 7, 1975, 89 Stat. 544.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94–106, Oct. 7, 1975, 89 Stat. 531, as amended, known as the Department of Defense Appropriation Authorization Act, 1976. Provisions authorizing the appropriation of funds are not classified to the Code. For complete classification of this Act to the Code, see Tables.

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.

§ 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.

(Pub. L. 98–94, title XII, § 1233, Sept. 24, 1983, 97 Stat. 695.)

REFERENCES IN TEXT

Section 101 of this Act, referred to in subsec. (b)(1), is section 101 of Pub. L. 98–94, title I, Sept. 24, 1983, 97 Stat. 618, which was not classified to the Code.

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.

§ 1520. Repealed. Pub. L. 105–85, div. A, title X, § 1078(g), Nov. 18, 1997, 111 Stat. 1916, and Pub. L. 105–277, div. I, title VI, § 601, Oct. 21, 1998, 112 Stat. 2681–886

Section, Pub. L. 95–79, title VIII, § 808, July 30, 1977, 91 Stat. 334; Pub. L. 97–375, title II, § 203(a)(1), Dec. 21, 1982, 96 Stat. 1822, related to use by the Department of Defense of human subjects for testing of chemical or biological agents, accounting to congressional committees with respect to experiments and studies, and notification of local civilian officials.

§ 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 of Defense (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 Senate and the Committee on Armed Services of the House of Representatives 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, rickettsiac, or protozoa), 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.

(Pub. L. 105–85, div. A, title X, § 1078, Nov. 18, 1997, 111 Stat. 1915; Pub. L. 106–65, div. A, title X, § 1067(4), Oct. 5, 1999, 113 Stat. 774.)

CODIFICATION

Section is comprised of section 1078 of Pub. L. 105–85. Subsec. (f) of section 1078 of Pub. L. 105–85 amended section 1523(b) of this title. Subsec. (g) of section 1078 of Pub. L. 105–85 repealed section 1520 of this title.

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

Notwithstanding any other provision of law, the Secretary of Defense (hereinafter in this section referred to as the ''Secretary'') 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) Except as provided by paragraphs (2) and (3), the destruction of such stockpile shall be completed by the stockpile elimination deadline.

(2) If a treaty banning the possession of chemical agents and munitions is ratified by the United States, the date for completing the destruction of the United States' stockpile of such agents and munitions shall be the date established by such treaty.

(3)(A) In the event of a declaration of war by the Congress or of a national emergency by the President or the Congress or if the Secretary of Defense determines that there has been a significant delay in the acquisition of an adequate number of binary chemical weapons to meet the requirements of the Armed Forces (as defined by the Joint Chiefs of Staff as of September 30, 1985), the Secretary may defer, beyond the stockpile elimination deadline, the destruction of not more than 10 percent of the stockpile described in subsection (a)(1) of this section.

(B) The Secretary shall transmit written notice to the Congress of any deferral made under subparagraph (A) not later than the earlier of (A) 30 days after the date on which the decision to defer is made, or (B) 30 days before the stockpile elimination deadline.

(4) If the Secretary 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.

(5) For purposes of this section, the term ''stockpile elimination deadline'' means December 31, 2004.

(c) Environmental protection and use of facilities

(1) In carrying out the requirement of subsection (a) of this section, the Secretary 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) of this section; 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)(A) 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.

(B) The prohibition in subparagraph (A) shall not apply with respect to items designated by the Secretary of Defense as lethal chemical agents, munitions, or related materials after November 8, 1985, if the State in which a destruction facility is located issues the appropriate permit or permits for the destruction of such items at the facility.

(4)(A) In order to carry out subparagraph (A) of paragraph (1), the Secretary 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) of this section. 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 450b(*l*) of title 25.

(5)(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—

(i) the storage of lethal chemical agents and munitions referred to in subsection (a) of this section at military installations in the continental United States; or

(ii) the destruction of such agents and munitions at facilities referred to in paragraph (1)(B).

(B) Assistance may be provided under this paragraph for capabilities to respond to emergencies 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.

(d) Requirement for strategic plan

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretary of the Army shall jointly prepare, and from time to time shall update as appropriate, a strategic plan for future activities for destruction 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 destruction and related support programs.

(B) Contingency planning for foreseeable or anticipated problems.

(C) A management approach and associated actions that address compliance with the obligations of the United States under the Chemical Weapons Convention treaty and that take full advantage of opportunities to accelerate destruction 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 updated under paragraph (1). Such submission shall be made each year at the time of the submission to the Congress that year of the President's budget for the next fiscal year.

(e) Management organization

(1) In carrying out this section, the Secretary shall provide for the establishment, not later than May 1, 1986, of a management organization within the Department of the Army.

(2) Such organization shall be responsible for management of the destruction of agents and munitions under this section.

(3) The Secretary shall designate a general officer or civilian equivalent as the director of the management organization established under paragraph (1). Such officer shall have—

(A) experience in the acquisition, storage, and destruction of chemical agents and munitions; and

(B) outstanding qualifications regarding safety in handling chemical agents and munitions.

(f) Identification of funds

(1) Funds for carrying out this section, including funds for military construction projects necessary to carry out this section, shall be set forth in the budget of the Department of Defense 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 for the purpose of carrying out subsection (c)(5) of this section shall be promptly made available to the Administrator of the Federal Emergency Management Agency.

(g) Periodic reports

(1) Except as provided by paragraph (3), the Secretary shall transmit, by December 15 of each year, a report to the Congress on the activities carried out under this section during the fiscal year ending on September 30 of the calendar year in which the report is to be made.

(2) Each annual report shall include the following:

(A) A site-by-site description of the construction, equipment, operation, and dismantling 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 Emergency Management Agency) in carrying out functions relating to emergency preparedness and response in accordance with subsection (c)(4) of this section.

(C) An accounting of all funds expended (during such fiscal year) for activities carried out 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 section 172(g) of Public Law 102–484 (50 U.S.C. 1521 note); 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 (c)(4) of this section.

(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.

(h) Prohibition on acquiring certain lethal chemical agents and munitions

(1) Except as provided in paragraph (2), no agency of the Federal Government may, after November 8, 1985, develop or acquire lethal chemical agents or munitions other than binary chemical weapons.

(2)(A) The Secretary of Defense may acquire any chemical agent or munition at any time for purposes of intelligence analysis.

(B) Chemical agents and munitions may be acquired for research, development, test, and evaluation purposes at any time, but only in quantities needed for such purposes and not in production quantities.

(i) Reaffirmation of United States position on first use of chemical agents and munitions

It is the sense of Congress that the President should publicly reaffirm the position of the United States as set out in the Geneva Protocol of 1925, which the United States ratified with reservations in 1975.

(j) Definitions

For purposes of 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.

(2) 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.

(3) The term ''destruction'' means, with respect to chemical munitions or agents—

(A) the demolishment 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.

(k) Operational verification

(1) Until the Secretary of the Army successfully completes (through the prove-out work to be conducted at Johnston Atoll) operational verification of the technology to be used for the destruction of live chemical agents and munitions under this section, the Secretary may not conduct any activity for equipment prove out and systems test before live chemical agents are introduced at a facility (other than the Johnston Atoll facility) at which the destruction of chemical agent[1] and munitions weapons is to take place under this section. The limitation in the preceding sentence shall not apply with respect to the Chemical Agent Munition Disposal System in Tooele, Utah.

(2) Upon the successful completion of the prove out of the equipment and facility at Johnston Atoll, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report certifying that the prove out is completed.

(3) If the Secretary determines at any time that there will be a delay in meeting the deadline of December 31, 1990, scheduled by the Department of Defense for completion of the operational verification at Johnston Atoll referred to in paragraph (1), the Secretary shall immediately notify the Committees of that projected delay.

(Pub. L. 99–145, title XIV, § 1412, Nov. 8, 1985, 99 Stat. 747; Pub. L. 100–456, div. A, title I, § 118, Sept. 29, 1988, 102 Stat. 1934; Pub. L. 101–510, div. A, title I, §§ 171, 172, Nov. 5, 1990, 104 Stat. 1507; Pub. L. 102–190, div. A, title I, § 151, Dec. 5, 1991, 105 Stat. 1313; Pub. L. 102–484, div. A, title I, §§ 171, 179, Oct. 23, 1992, 106 Stat. 2341, 2347; Pub. L. 103–160, div. A, title I, § 107(c), Nov. 30, 1993, 107 Stat. 1564; Pub. L. 103–337, div. A, title I, § 142, Oct. 5, 1994, 108 Stat. 2689; Pub. L. 104–106, div. A, title I, § 153(b), (c), title XV, § 1502(c)(6), Feb. 10, 1996, 110 Stat. 216, 508; Pub. L. 104–201, div. A, title X, § 1074(d)(2), Sept. 23, 1996, 110 Stat. 2661; Pub. L. 105–85, div. A, title X, § 1041(d), Nov. 18, 1997, 111 Stat. 1885; Pub. L. 105–261, div. A, title I, § 141, Oct. 17, 1998, 112 Stat. 1942; Pub. L. 106–65, div. A, title I, § 141(b), title X, § 1067(11), Oct. 5, 1999, 113 Stat. 537, 775; Pub. L. 107–107, div. A, title X, § 1048(i)(4), Dec. 28, 2001, 115 Stat. 1229; Pub. L. 108–375, div. A, title IX, § 931, Oct. 28, 2004, 118 Stat. 2031; Pub. L. 109–163, div. A, title IX, § 921(a), Jan. 6, 2006, 119 Stat. 3410; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 110–181, div. A, title IX, §§ 923, 924, Jan. 28, 2008, 122 Stat. 284.)

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

2008—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.

2001—Subsec. (g)(2)(C)(vii). Pub. L. 107–107 substituted ''(c)(4)'' for ''(c)(3)''.

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, § 141(b)(1)(A), added par. (2) and struck out former par. (2) which read as follows: ''Facilities constructed to carry out this section may not be used for any purpose other than the destruction of lethal chemical weapons and munitions, and when no longer needed to carry out this section, such facilities shall be cleaned, dismantled, and disposed of in accordance with applicable laws and regulations.''

Subsec. (c)(3) to (5). Pub. L. 106–65, § 141(b)(1)(B), (C), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (f)(2). Pub. L. 106–65, § 141(b)(2), substituted ''(c)(5)'' for ''(c)(4)''.

Subsec. (g)(2)(B). Pub. L. 106–65, § 141(b)(3), substituted ''(c)(4)'' for ''(c)(3)''.

Subsec. (k)(2). Pub. L. 106–65, § 1067(11), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1998—Subsec. (c)(4). Pub. L. 105–261, § 141(a), added par. (4).

Subsec. (f). Pub. L. 105–261, § 141(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(2)(B). Pub. L. 105–261, § 141(c)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (g)(2)(B)(vii). Pub. L. 105–261, § 141(c)(1), added cl. (vii).

Subsec. (g)(2)(C), (D). Pub. L. 105–261, § 141(c)(2), redesignated subpars. (B) and (C) as (C) and (D), respectively.

1997—Subsec. (g)(3), (4). Pub. L. 105–85 struck out ''No 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 quar-

[1] So in original. Probably should be ''agents''.

terly 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 ''Committees 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). Pub. L. 104–106, §153(b)(1), substituted ''Periodic reports'' for ''Annual report'' in heading.

Subsec. (g)(2). Pub. L. 104–201, §1074(d)(2)(A), substituted ''shall include the following:'' for ''shall contain—'' in introductory provisions.

Pub. L. 104–106, §153(b)(2)(A), substituted ''Each annual report shall contain—'' for ''Each such report shall contain—'' in introductory provisions.

Subsec. (g)(2)(A). Pub. L. 104–201, §1074(d)(2)(B), substituted ''A site-by-site'' for ''a site-by-site'' and ''and operation.'' for ''and operation;''.

Subsec. (g)(2)(B). Pub. L. 104–201, §1074(d)(2)(C), substituted ''An accounting'' for ''an accounting'' in introductory provisions.

Subsec. (g)(2)(B)(iv). Pub. L. 104–106, §153(b)(2)(B)(i), struck out ''and'' after ''development;''.

Subsec. (g)(2)(B)(v). Pub. L. 104–106, §153(b)(2)(B)(ii), which directed substitution of ''; and'' for period at end of cl. (v), could not be executed because cl. (v) ended with ''; and'' and not with a period.

Subsec. (g)(2)(B)(vi). Pub. L. 104–106, §153(b)(2)(B)(iii), added cl. (vi).

Subsec. (g)(2)(C). Pub. L. 104–201, §1074(d)(2)(C), substituted ''An assessment'' for ''an assessment'' in introductory provisions.

Subsec. (g)(3). Pub. L. 104–106, §153(b)(4), added par. (3). Former par. (3) redesignated (4).

Subsec. (g)(4). Pub. L. 104–106, §153(b)(5), substituted ''paragraph (1) not later'' for ''this subsection not later'' and inserted at end ''No quarterly report is required under paragraph (3) after the transmittal of the final report under paragraph (1).''

Pub. L. 104–106, §153(b)(3), redesignated par. (3) as (4).

Subsec. (k)(2). 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 ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (f). Pub. L. 103–337 inserted '', including funds for military construction projects necessary to carry out this section,'' after ''carrying out this section'' and struck out at end ''Funds for military construction projects necessary to carry out this section may be set out in the annual military construction budget separately from other funds for such project.''

1993—Subsec. (c)(3). Pub. L. 103–160 substituted ''processing, approving, and overseeing'' for ''processing and approving''.

1992—Subsec. (a). Pub. L. 102–484, §179(1), struck out par. (1) designation before ''Notwithstanding'' and struck out par. (2) which read as follows: ''Such destruction shall be carried out in conjunction with the acquisition of binary chemical weapons for use by the Armed Forces.''

Subsec. (b)(5). Pub. L. 102–484, §171, substituted ''December 31, 2004'' for ''July 31, 1999''.

Subsec. (c)(1). Pub. L. 102–484, §179(2), substituted ''subsection (a)'' for ''subsection (a)(1)'' in introductory provisions.

Subsec. (g)(1). Pub. L. 102–484, §179(3)(A), substituted ''paragraph (3)'' for ''paragraph (4)''.

Subsec. (g)(2). Pub. L. 102–484, §179(3)(B), (C), redesignated par. (3) as (2), substituted ''such report'' for ''report other than the first one'' in introductory provisions, and struck out former par. (2) which read as follows: ''The first such report shall be transmitted by December 15, 1985, and shall contain—

''(A) an accounting of the United States' stockpile of lethal chemical agents and munitions on November 8, 1985; and

''(B) a schedule of the activities planned to be carried out under this section during fiscal year 1986.''

Subsec. (g)(3), (4). Pub. L. 102–484, §179(3)(D), redesignated par. (4) as (3). Former par. (3) redesignated (2).

1991—Subsec. (b)(5). Pub. L. 102–190, §151(a), substituted ''July 31, 1999'' for ''April 30, 1997''.

Subsec. (c)(3). Pub. L. 102–190, §151(b), inserted at end ''Additionally, the Secretary may provide funds through cooperative agreements with State and local governments for the purpose of assisting them in processing and approving 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.''

1990—Subsec. (a)(1). Pub. L. 101–510, §171(b), substituted ''November 8, 1985'' for ''the date of the enactment of this Act''.

Subsec. (c)(3). Pub. L. 101–510, §172, added par. (3).

Subsec. (g)(3)(C). Pub. L. 101–510, §171(a), added subpar. (C).

Subsec. (h)(1). Pub. L. 101–510, §171(b), substituted ''November 8, 1985'' for ''the date of the enactment of this Act''.

1988—Subsec. (b)(1), (3)(A). Pub. L. 100–456, §118(a)(1), substituted ''the stockpile elimination deadline'' for ''September 30, 1994''.

Subsec. (b)(3)(B). Pub. L. 100–456, §118(a)(2), substituted ''not later than the earlier of (A) 30 days after the date on which the decision to defer is made, or (B) 30 days before the stockpile elimination deadline'' for ''within 30 days after the date on which the determination to defer is made or by August 31, 1994, whichever is earlier''.

Subsec. (b)(4), (5). Pub. L. 100–456, §118(a)(3), added pars. (4) and (5).

Subsec. (k). Pub. L. 100–456, §118(b), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''The provisions of this section shall take effect on October 1, 1985.''

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' and ''Administrator'' substituted for ''Director of the Federal Emergency Management Agency'' and ''Director'', respectively, in subsecs. (c)(5) and (f)(2) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 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(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title IX, §921(b), Jan. 6, 2006, 119 Stat. 3410, provided that: ''The amendments made by subsection (a) [amending this section]—

''(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

Pub. L. 110–181, div. A, title IX, § 922, Jan. 28, 2008, 122 Stat. 282, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris on January 13, 1993 (commonly referred to as the 'Chemical Weapons Convention'), requires that destruction of the entire United States chemical weapons stockpile be completed by not later than April 29, 2007.

''(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.

''(7) Section 921(b)(3) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2359) contained a sense of Congress urging the Secretary of Defense to ensure the elimination of the United States chemical weapons stockpile in the shortest time possible, consistent with the requirement to protect public health, safety, and the environment.

''(8) Section 921(b)(4) 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.

''(c) REPORTS REQUIRED.—

''(1) IN GENERAL.—Not later than March 15, 2008, and every 180 days thereafter 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 (3) a report on the implementation by the United States of its chemical weapons destruction obligations under the Chemical Weapons Convention.

''(2) ELEMENTS.—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 destruction deadline of April 29, 2012, currently provided by the Chemical Weapons Convention, and by December 31, 2017.

''(C) A description of the funding required to achieve each of the options for destruction described under subparagraph (B), and a detailed lifecycle 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 destruction deadline under the Chemical Weapons Convention of April 29, 2012, or as soon thereafter as possible.

''(3) MEMBERS AND COMMITTEES OF CONGRESS.—The members and committees of Congress referred to in this paragraph are—

''(A) the majority leader of the Senate, the minority leader of the Senate, and the Committees on Armed Services and Appropriations of the Senate; and

''(B) the Speaker of the House of Representatives, the majority leader of the House of Representatives, the minority leader of the House of Representatives, and the Committees on Armed Services and Appropriations of the House of Representatives.''

DEADLINE FOR DESTRUCTION OF STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS

Pub. L. 110–116, div. A, title VIII, § 8119, Nov. 13, 2007, 121 Stat. 1340, provided that:

''(a) Notwithstanding any other provision of law, the Department of Defense shall complete work on the destruction of the United States stockpile of lethal chemical agents and munitions, including those stored at Blue Grass Army Depot, Kentucky, and Pueblo Chemical Depot, Colorado, by the deadline established by the Chemical Weapons Convention, and in no circumstances later than December 31, 2017.

''(b) REPORT.—

''(1) Not later than December 31, 2007, and every 180 days thereafter, the Secretary of Defense shall submit to the parties described in paragraph (2) a report on the progress of the Department of Defense toward compliance with this section.

''(2) The parties referred to in paragraph (1) are the Speaker of the House of Representatives, the Majority and Minority Leaders of the House of Representatives, the Majority and Minority Leaders of the Senate, and the congressional defense committees [Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives].

''(3) Each report submitted under paragraph (1) shall include the updated and projected annual fund-

ing levels necessary to achieve full compliance with this section. The projected funding levels for each report shall include a detailed accounting of the complete life-cycle costs for each of the chemical disposal projects.

''(c) In this section, the term 'Chemical Weapons Convention' means the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, with annexes, done at Paris, January 13, 1993, and entered into force April 29, 1997 (T. Doc. 103–21).''

INCENTIVES CLAUSES IN CHEMICAL DEMILITARIZATION CONTRACTS

Pub. L. 109–364, div. A, title IX, §923, Oct. 17, 2006, 120 Stat. 2360, provided that:

''(a) IN GENERAL.—

''(1) AUTHORITY TO INCLUDE CLAUSES IN CONTRACTS.—The Secretary of Defense may, for the purpose specified in paragraph (2), authorize the inclusion of an incentives clause in any contract for the destruction of the United States stockpile of lethal chemical agents and munitions carried out pursuant to section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521).

''(2) PURPOSE.—The purpose of a clause referred to in paragraph (1) is to provide the contractor for a chemical demilitarization facility an incentive to accelerate the safe elimination of the United States chemical weapons stockpile and to reduce the total cost of the Chemical Demilitarization Program by providing incentive payments for the early completion of destruction operations and the closure of such facility.

''(b) INCENTIVES CLAUSES.—

''(1) IN GENERAL.—An incentives clause under this section shall permit the contractor for the chemical demilitarization facility concerned the opportunity to earn incentive payments for the completion of destruction operations and facility closure activities within target incentive ranges specified in such clause.

''(2) LIMITATION ON INCENTIVE PAYMENTS.—The maximum incentive payment under an incentives clause with respect to a chemical demilitarization facility may not exceed amounts as follows:

''(A) In the case of an incentive payment for the completion of destruction operations within the target incentive range specified in such clause, $110,000,000.

''(B) In the case of an incentive payment for the completion of facility closure activities within the target incentive range specified in such clause, $55,000,000.

''(3) TARGET RANGES.—An incentives clause in a contract under this section shall specify the target incentive ranges of costs for completion of destruction operations and facility closure activities, respectively, as jointly agreed upon by the contracting 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.

''(4) CALCULATION OF INCENTIVE PAYMENTS.—The amount of the incentive payment earned by a contractor for a chemical demilitarization facility under an incentives clause under this section shall be based upon a determination by the Secretary on how early in the target incentive range specified in such clause destruction operations or facility closure activities, as the case may be, are completed.

''(5) CONSISTENCY WITH EXISTING OBLIGATIONS.—The provisions of any incentives clause under this section shall be consistent with the obligation of the Secretary of Defense under section 1412(c)(1)(A) of the Department of Defense Authorization Act, 1986 [50 U.S.C. 1521(c)(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.

''(6) ADDITIONAL TERMS AND CONDITIONS.—In negotiating the inclusion of an incentives clause in a contract under this section, the Secretary may include in such clause such additional terms and conditions as the Secretary considers appropriate.

''(c) ADDITIONAL LIMITATION ON PAYMENTS.—

''(1) PAYMENT CONDITIONAL ON PERFORMANCE.—No payment may be made under an incentives clause under this section unless the Secretary determines that the contractor concerned has satisfactorily performed its duties under such incentives clause.

''(2) PAYMENT CONTINGENT ON APPROPRIATIONS.—An incentives clause under this section 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 section.''

MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT BLUEGRASS ARMY DEPOT, KENTUCKY AND PUEBLO ARMY DEPOT, COLORADO

Pub. L. 107–248, title VIII, §8122, Oct. 23, 2002, 116 Stat. 1566, provided that:

''(a) MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT BLUEGRASS ARMY DEPOT, KENTUCKY.—If a technology other than the baseline incineration program is selected for the destruction of lethal chemical munitions pursuant to section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 50 U.S.C. 1521 note), the program manager for the Assembled Chemical Weapons Assessment shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Bluegrass Army Depot, Kentucky, including management of the pilot-scale facility phase of the alternative technology.

''(b) MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT PUEBLO DEPOT, COLORADO.—The program manager for the Assembled Chemical Weapons Assessment shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Pueblo Army Depot, Colorado, including management of the pilot-scale facility phase of the alternative technology selected for the destruction of lethal chemical munitions.''

ALTERNATIVE TECHNOLOGIES FOR DESTRUCTION OF ASSEMBLED CHEMICAL WEAPONS

Pub. L. 105–261, div. A, title I, §142, Oct. 17, 1998, 112 Stat. 1943, as amended by Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that:

''(a) PROGRAM MANAGEMENT.—The program manager for the Assembled Chemical Weapons Assessment shall continue to manage the development and testing (including demonstration and pilot-scale testing) of technologies for the destruction of lethal chemical munitions that are potential or demonstrated alternatives to the baseline incineration program. In performing such management, the program manager shall act independently of the program manager for Chemical Demilitarization and shall report to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(b) POST-DEMONSTRATION ACTIVITIES.—(1) The program manager for the Assembled Chemical Weapons Assessment may carry out those activities necessary to ensure that an alternative technology for the destruction of lethal chemical munitions can be implemented immediately after—

''(A) the technology has been demonstrated to be successful; and

''(B) the Under Secretary of Defense for Acquisition, Technology, and Logistics has submitted a re-

port on the demonstration to Congress that includes a decision to proceed with the pilot-scale facility phase for an alternative technology.

''(2) To prepare for the immediate implementation of any such technology, the program manager may, during fiscal years 1998 and 1999, take the following actions:

''(A) Establish program requirements.

''(B) Prepare procurement documentation.

''(C) Develop environmental documentation.

''(D) Identify and prepare to meet public outreach and public participation requirements.

''(E) Prepare to award a contract for the design, construction, and operation of a pilot facility for the technology to the provider team for the technology not later than December 30, 1999.

''(c) INDEPENDENT EVALUATION.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall provide for an independent evaluation of the cost and schedule of the Assembled Chemical Weapons Assessment, which shall be performed and submitted to the Under Secretary not later than September 30, 1999. The evaluation shall be performed by a nongovernmental organization qualified to make such an evaluation.

''(d) PILOT FACILITIES CONTRACTS.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall determine whether to proceed with pilot-scale testing of a technology referred to in paragraph (2) in time to award a contract for the design, construction, and operation of a pilot facility for the technology to the provider team for the technology not later than December 30, 1999. If the Under Secretary determines to proceed with such testing, the Under Secretary shall (exercising the acquisition authority of the Secretary of Defense) so award a contract not later than such date.

''(2) Paragraph (1) applies to an alternative technology for the destruction of lethal chemical munitions, other than incineration, that the Under Secretary—

''(A) certifies in writing to Congress is—

''(i) as safe and cost effective for disposing of assembled chemical munitions as is incineration of such munitions; and

''(ii) is capable of completing the destruction of such munitions on or before the later of the date by which the destruction of the munitions would be completed if incineration were used or the deadline date for completing the destruction of the munitions under the Chemical Weapons Convention; and

''(B) determines as satisfying the Federal and State environmental and safety laws that are applicable to the use of the technology and to the design, construction, and operation of a pilot facility for use of the technology.

''(3) The Under Secretary shall consult with the National Research Council in making determinations and certifications for the purpose of paragraph (2).

''(4) In this subsection, the term 'Chemical Weapons Convention' means the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, opened for signature on January 13, 1993, together with related annexes and associated documents.

''(e) PLAN FOR PILOT PROGRAM.—If the Secretary of Defense proceeds with a pilot program under section 152(f) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 214; 50 U.S.C. 1521 note), the Secretary shall prepare a plan for the pilot program and shall submit to Congress a report on such plan (including information on the cost of, and schedule for, implementing the pilot program).

''(f) FUNDING.—(1) Of the amount authorized to be appropriated under section 107 [112 Stat. 1937], funds shall be available for the program manager for the Assembled Chemical Weapons Assessment for the following:

''(A) Demonstrations of alternative technologies under the Assembled Chemical Weapons Assessment.

''(B) Planning and preparation to proceed from demonstration of an alternative technology immediately into the development of a pilot-scale facility for the technology, including planning and preparation for—

''(i) continued development of the technology leading to deployment of the technology for use;

''(ii) satisfaction of requirements for environmental permits;

''(iii) demonstration, testing, and evaluation;

''(iv) initiation of actions to design a pilot plant;

''(v) provision of support at the field office or depot level for deployment of the technology for use; and

''(vi) educational outreach to the public to engender support for the deployment.

''(C) The independent evaluation of cost and schedule required under subsection (c).

''(2) Funds authorized to be appropriated under section 107(1) are authorized to be used for awarding contracts in accordance with subsection (d) and for taking any other action authorized in this section.

''(g) ASSEMBLED CHEMICAL WEAPONS ASSESSMENT DEFINED.—In this section, the term 'Assembled Chemical Weapons Assessment' means the pilot program carried out under section 8065 of the Department of Defense Appropriations Act, 1997 (section 101(b) of Public Law 104–208; 110 Stat. 3009–101; 50 U.S.C. 1521 note).''

PILOT PROGRAM FOR DEMILITARIZATION OF ASSEMBLED CHEMICAL MUNITIONS

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8065], Sept. 30, 1996, 110 Stat. 3009–71, 3009–101, as amended by Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: ''Notwithstanding section 142 of H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997, as passed by the Senate on September 10, 1996 [section 142 of Pub. L. 104–201, which amended section 152 of Pub. L. 104–106, set out below], of the funds provided in title VI of this Act [Pub. L. 104–208, div. A, title I, §101(b) [title VI], Sept. 30, 1996, 110 Stat. 3009–71, 3009–85], under the heading 'Chemical Agents and Munitions Destruction, Defense', $40,000,000 shall only be available for the conduct of a pilot program to identify and demonstrate not less than two alternatives to the baseline incineration process for the demilitarization of assembled chemical munitions: *Provided*, That the Under Secretary of Defense for Acquisition, Technology, and Logistics shall, not later than December 1, 1996, designate a program manager who is not, nor has been, in direct or immediate control of the baseline reverse assembly incineration demilitarization program to carry out the pilot program: *Provided further*, That the Under Secretary of Defense for Acquisition, Technology, and Logistics shall evaluate the effectiveness of each alternative chemical munitions demilitarization technology identified and demonstrated under the pilot program to demilitarize munitions and assembled chemical munitions while meeting all applicable Federal and State environmental and safety requirements: *Provided further*, That the Under Secretary of Defense for Acquisition, Technology, and Logistics shall transmit, by December 15 of each year, a report to the congressional defense committees on the activities carried out under the pilot program during the preceding fiscal year in which the report is to be made: *Provided further*, That section 142(f)(3) of H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997, as passed by the Senate on September 10, 1996 [probably means section 152(f)(3) of Pub. L. 104–106, set out below], is repealed: *Provided further*, That no funds may be obligated for the construction of a baseline incineration facility at the Lexington Blue Grass Army Depot or the Pueblo Depot activity until 180 days after the Secretary of Defense has submitted to the congressional defense committees a report detailing the effectiveness of each alternative chemical munitions demilitarization technology identified and demonstrated under the pilot program and its ability to meet the applicable safety and environmental requirements: *Provided further*, That none of the funds in this or any other Act may be obligated for the

preparation of studies, assessments, or planning of the removal and transportation of stockpile assembled unitary chemical weapons or neutralized chemical agent to any of the eight chemical weapons storage sites within the continental United States.''

DESTRUCTION OF EXISTING STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS

Pub. L. 106–65, div. A, title I, §141, Oct. 5, 1999, 113 Stat. 537, provided that:

''(a) PROGRAM ASSESSMENT.—(1) The Secretary of Defense shall conduct an assessment of the current program for destruction of the United States' stockpile of chemical agents and munitions, including the Assembled Chemical Weapons Assessment, for the purpose of reducing significantly the cost of such program and ensuring completion of such program in accordance with the obligations of the United States under the Chemical Weapons Convention while maintaining maximum protection of the general public, the personnel involved in the demilitarization program, and the environment.

''(2) Based on the results of the assessment conducted under paragraph (1), the Secretary may take those actions identified in the assessment that may be accomplished under existing law to achieve the purposes of such assessment and the chemical agents and munitions stockpile destruction program.

''(3) Not later than March 1, 2000, the Secretary shall submit to Congress a report on—

''(A) those actions taken, or planned to be taken, under paragraph (2); and

''(B) any recommendations for additional legislation that may be required to achieve the purposes of the assessment conducted under paragraph (1) and of the chemical agents and munitions stockpile destruction program.

''(b) CHANGES AND CLARIFICATIONS REGARDING PROGRAM.—[Amended this section.]

''(c) COMPTROLLER GENERAL ASSESSMENT AND REPORT.—(1) Not later than March 1, 2000, the Comptroller General of the United States shall review and assess the program for destruction of the United States stockpile of chemical agents and munitions and report the results of the assessment to the congressional defense committees.

''(2) The assessment conducted under paragraph (1) shall include a review of the program execution and financial management of each of the elements of the program, including—

''(A) the chemical stockpile disposal project;

''(B) the nonstockpile chemical materiel project;

''(C) the alternative technologies and approaches project;

''(D) the chemical stockpile emergency preparedness program; and

''(E) the assembled chemical weapons assessment program.

''(d) DEFINITIONS.—As used in this section:

''(1) The term 'Assembled Chemical Weapons Assessment' means the pilot program carried out under section 8065 of the Department of Defense Appropriations Act, 1997 (section 101(b) of Public Law 104–208; 110 Stat. 3009–101; 50 U.S.C. 1521 note).

''(2) The term 'Chemical Weapons Convention' means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, ratified by the United States on April 25, 1997, and entered into force on April 29, 1997.''

Section 152 of Pub. L. 104–106, as amended by Pub. L. 104–201, div. A, title I, §142, Sept. 23, 1996, 110 Stat. 2448; Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8065], Sept. 30, 1996, 110 Stat. 3009–71, 3009–102, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall proceed with the program for destruction of the chemical munitions stockpile of the Department of Defense while maintaining the maximum protection of the environment, the general public, and the personnel involved in the actual destruction of the munitions. In carrying out such program, the Secretary shall use technologies and procedures that will minimize the risk to the public at each site.

''(b) 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.

''(c) ASSESSMENT OF ALTERNATIVES.—(1) The Secretary of Defense shall conduct an assessment of the current chemical demilitarization program and of measures that could be taken to reduce significantly the total cost of the program, while ensuring maximum protection of the general public, the personnel involved in the demilitarization program, and the environment. The measures considered shall be limited to those that would minimize the risk to the public. The assessment shall be conducted without regard to any limitation that would otherwise apply to the conduct of such an assessment under any provision of law.

''(2) The assessment shall be conducted in coordination with the National Research Council.

''(3) Based on the results of the assessment, the Secretary shall develop appropriate recommendations for revision of the chemical demilitarization program.

''(4) Not later than March 1, 1996, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and House of Representatives] an interim report assessing the current status of the chemical stockpile demilitarization program, including the results of the Army's analysis of the physical and chemical integrity of the stockpile and implications for the chemical demilitarization program, and providing recommendations for revisions to that program that have been included in the budget request of the Department of Defense for fiscal year 1997. The Secretary shall submit to the congressional defense committees with the submission of the budget request of the Department of Defense for fiscal year 1998 a final report on the assessment conducted in accordance with paragraph (1) and recommendations for revision to the program, including an assessment of alternative demilitarization technologies and processes to the baseline incineration process and potential reconfiguration of the stockpile that should be incorporated in the program.

''(d) ASSISTANCE FOR CHEMICAL WEAPONS STOCKPILE COMMUNITIES AFFECTED BY BASE CLOSURE.—(1) The Secretary of Defense shall review and evaluate issues associated with closure and reutilization of Department of Defense facilities co-located with continuing chemical stockpile and chemical demilitarization operations.

''(2) The review shall include the following:

''(A) An analysis of the economic impacts on these communities and the unique reuse problems facing local communities associated with ongoing chemical weapons programs.

''(B) Recommendations of the Secretary on methods for expeditious and cost-effective transfer or lease of these facilities to local communities for reuse by those communities.

''(3) The Secretary shall submit to the congressional defense committees a report on the review and evaluation under this subsection. The report shall be submitted not later than 90 days after the date of the enactment of this Act [Feb. 10, 1996].

''(e) ASSESSMENT OF ALTERNATIVE TECHNOLOGIES FOR DEMILITARIZATION OF ASSEMBLED CHEMICAL MUNITIONS.—(1) In addition to the assessment required by

subsection (c), the Secretary of Defense shall conduct an assessment of the chemical demilitarization program for destruction of assembled chemical munitions and of the alternative demilitarization technologies and processes (other than incineration) that could be used for the destruction of the lethal chemical agents that are associated with these munitions, while ensuring maximum protection for the general public, the personnel involved in the demilitarization program, and the environment. The measures considered shall be limited to those that would minimize the risk to the public and reduce the total cost of the chemical agents and munitions destruction program. The assessment shall be conducted without regard to any limitation that would otherwise apply to the conduct of such assessment under any provision of law.

''(2) The assessment shall be conducted in coordination with the National Research Council.

''(3) Among the alternatives, the assessment shall include a determination of the cost of incineration of the current chemical munitions stockpile by building incinerators at each existing facility compared to the proposed cost of dismantling those same munitions, neutralizing them at each storage site (other than Tooele Army Depot or Johnston Atoll), and transporting the neutralized remains and all munitions parts to a treatment, storage, and disposal facility within the United States that has the necessary environmental permits to undertake incineration of the material.

''(4) Based on the results of the assessment, the Secretary shall develop appropriate recommendations for revision of the chemical demilitarization program.

''(5) Not later than December 31, 1997, the Secretary of Defense shall submit to Congress a report on the assessment conducted in accordance with paragraph (1) and any recommendations for revision of the chemical demilitarization program, including the continued development of alternative demilitarization technologies and processes other than incineration that could be used for the destruction of the lethal chemical agents that are associated with these assembled chemical munitions and the chemical munitions demilitarization sites for which the selected technologies should be developed.

''(f) PILOT PROGRAM FOR DEMILITARIZATION OF CHEMICAL AGENTS FOR ASSEMBLED MUNITIONS.—(1) If the Secretary of Defense makes a decision to continue the development of an alternative demilitarization technology or process (other than incineration) that could be used for the destruction of the lethal chemical agents that are associated with assembled chemical munitions, $25,000,000 shall be available from the funds authorized to be appropriated in section 107 of the National Defense Authorization Act for Fiscal Year 1997 [Pub. L. 104–201, 110 Stat. 2440] for the chemical agents and munitions destruction program, in order to initiate a pilot program using the selected alternative technology or process for the destruction of chemical agents that are stored at these sites.

''(2) Not less than 30 days before using funds to initiate the pilot program under paragraph (1), the Secretary shall submit notice in writing to Congress of the Secretary's intent to do so.

''[(3) Repealed. Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8065], Sept. 30, 1996, 110 Stat. 3009–71, 3009–102.]''

CHEMICAL DEMILITARIZATION CITIZENS ADVISORY COMMISSIONS

Pub. L. 102–484, div. A, title I, § 172, Oct. 23, 1992, 106 Stat. 2341, as amended by Pub. L. 104–106, div. A, title I, § 153(a), Feb. 10, 1996, 110 Stat. 215; Pub. L. 104–201, div. A, title X, § 1073(d), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 110–181, div. A, title IX, § 921, Jan. 28, 2008, 122 Stat. 282; Pub. L. 110–417, [div. A], title IX, § 921, Oct. 14, 2008, 122 Stat. 4573; Pub. L. 111–84, div. A, title X, § 1073(c)(8), Oct. 28, 2009, 123 Stat. 2475, provided that:

''(a) ESTABLISHMENT.—(1) The Secretary of the Army shall establish a citizens' commission for each State in which there is a low-volume site (as defined in section 180 [set out below]). Each such commission shall be known as the 'Chemical Demilitarization Citizens' Advisory Commission' for that State.

''(2) The Secretary shall also establish a Chemical Demilitarization Citizens' Advisory Commission for any State in which there is located a chemical weapons storage site other than a low-volume site, if the establishment of such a commission for such State is requested by the Governor of that State.

''(b) FUNCTIONS.—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 this section to receive citizen and State concerns regarding the ongoing program of the Army for the disposal of the lethal chemical agents and munitions in the stockpile referred to in section 1412(a)(1) of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521(a)(1)) at each of the sites with respect to which a commission is established pursuant to subsection (a).

''(c) MEMBERSHIP.—(1) Each commission established for a State pursuant to subsection (a) 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.

''(2) For purposes of paragraph (1), affected areas are those areas located within a 50-mile radius of a chemical weapons storage site.

''(d) CONFLICTS OF INTEREST.—For a period of five years after the termination of any commission, no corporation, partnership, or other organization in which a member of that commission, a spouse of a member of that commission, or a natural or adopted child of a member of that commission has an ownership interest may be awarded—

''(1) a contract related to the disposal of lethal chemical agents or munitions in the stockpile referred to in section 1412(a)(1) of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521(a)(1)); or

''(2) a subcontract under such a contract.

''(e) CHAIRMAN.—The members of each commission shall designate the chairman of the commission from among the members of the commission.

''(f) COLORADO AND KENTUCKY CHEMICAL DEMILITARIZATION CITIZENS' ADVISORY COMMISSIONS.—(1) Notwithstanding subsections (b), (g), and (h), and consistent with section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [Pub. L. 105–261] (50 U.S.C. 1521 note) and section 8122 of the Department of Defense Appropriations Act, 2003 (Public Law 107–248; 116 Stat. 1566; 50 U.S.C. 1521 note), the Secretary of the Army shall transfer responsibilities for the Chemical Demilitarization Citizens' Advisory Commissions in Colorado and Kentucky to the Program Manager for Assembled Chemical Weapons Alternatives.

''(2) In carrying out the responsibilities transferred under paragraph (1), the Program Manager for Assembled Chemical Weapons Alternatives shall take appropriate actions to ensure that each Commission referred to in paragraph (1) retains the capacity to receive citizen and State concerns regarding the ongoing chemical demilitarization program in the State concerned.

''(3) A representative of the Office of the Assistant to the Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall meet with each Commission referred to in paragraph (1) not less often than twice a year.

''(4) Funds appropriated for the Assembled Chemical Weapons Alternatives Program shall be available for travel and associated travel costs for Commissioners on the Commissions referred to in paragraph (1) when such travel is conducted at the invitation of the Special Assistant for Chemical and Biological Defense and Chemical Demilitarization Programs of the Department of Defense.

''(g) MEETINGS.—Each commission shall meet with a representative from the Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) upon joint agreement between the chairman of the commission and that representative. The two parties shall meet not less often than twice a year and may meet more often at their discretion.

''(h) PAY AND EXPENSES.—Members of each commission shall receive no pay for their involvement in the activities of their commissions. Funds appropriated for the Chemical Stockpile Demilitarization Program may be used for travel and associated travel costs for Citizens' Advisory Commissioners, when such travel is conducted at the invitation of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology).

''(i) TERMINATION OF COMMISSIONS.—Each commission shall be terminated after the closure activities required pursuant to regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) have been completed for the chemical agent destruction facility in the commission's State, or upon the request of the Governor of the commission's State, whichever occurs first.''

[Pub. L. 111–84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(8) to section 921(1) of Pub. L. 110–417, included in the credit set out above, is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.]

ALTERNATIVE DISPOSAL PROCESS FOR LOW-VOLUME SITES; REVISED DISPOSAL CONCEPT PLAN

Sections 174 and 175 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title I, §155(b), Nov. 30, 1993, 107 Stat. 1579, provided that:

''SEC. 174. ALTERNATIVE DISPOSAL PROCESS FOR LOW-VOLUME SITES.

''(a) REQUIREMENT FOR ALTERNATIVE PROCESS.—If the date by which chemical weapons destruction and demilitarization operations can be completed at a low-volume site using an alternative technology process evaluated by the Secretary of the Army falls within the deadline established by the amendment made by section 171 [amending this section] and the Secretary determines that the use of that alternative technology process for the destruction of chemical weapons at that site is significantly safer and equally or more cost-effective than the use of the baseline disassembly and incineration process, then the Secretary of the Army, as part of the requirement of section 1412(a) of Public Law 99–145 [subsec. (a) of this section], shall carry out the disposal of chemical weapons at that site using such alternative technology process. In addition, the Secretary may carry out the disposal of chemical weapons at sites other than low-volume sites using an alternative technology process (rather than the baseline process) after notifying Congress of the Secretary's intent to do so.

''(b) APPLICABILITY OF CERTAIN PROVISIONS OF SECTION 1412.—Subsections (c), (e), (f), and (g) of section 1412 of Public Law 99–145 (50 U.S.C. 1521) shall apply to this section and to activities under this section in the same manner as if this section were part of that section 1412.

''SEC. 175. REVISED CHEMICAL WEAPONS DISPOSAL CONCEPT PLAN.

''(a) REVISED PLAN.—If, pursuant to section 174, the Secretary of the Army is required to implement an alternative technology process for destruction of chemical weapons at any low-volume site, the Secretary shall submit to Congress a revised chemical weapons disposal concept plan incorporating the alternative technology process and reflecting the revised stockpile disposal schedule developed under section 1412(b) of Public Law 99–145 (50 U.S.C. 1521(b)), as amended by section 171. In developing the revised concept plan, the Secretary should consider, to the maximum extent practicable, revisions to the program and program schedule that capitalize on the changes to the chemical demilitarization schedule resulting from the revised stockpile elimination deadline by reducing cost and decreasing program risk.

''(b) MATTERS TO BE INCLUDED.—The revised concept plan should include—

''(1) life-cycle cost estimates and schedules; and

''(2) a description of the facilities and operating procedures to be employed using the alternative technology process.

''(c) APPLICABILITY OF CERTAIN PROVISIONS OF SECTION 1412.—Subsection (c) of section 1412 of Public Law 99–145 (50 U.S.C. 1521) shall apply to the revised concept plan in the same manner as if this section were part of that section 1412.

''(d) SUBMISSION OF REVISED PLAN.—If the Secretary is required to submit a revised concept plan under this section, the Secretary shall submit the revised concept plan during the 120-day period beginning at the end of the 60-day period following the submission of the report of the Secretary required under section 173 [106 Stat. 2342].

''(e) LIMITATION.—If the Secretary is required to submit a revised concept plan under this section, no funds may be obligated for procurement of equipment or for facilities planning and design activities (other than for those preliminary planning and design activities required to comply with subsection(b)(2)) for a chemical weapons disposal facility at any low-volume site at which the Secretary intends to implement an alternative technology process until the Secretary submits the revised concept plan.''

SENSE OF CONGRESS CONCERNING INTERNATIONAL CONSULTATION AND EXCHANGE PROGRAM

Section 178 of Pub. L. 102–484 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 weapons, 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

Section 180 of Pub. L. 102–484 provided that: ''For purposes of this subtitle [subtitle G (§§171–180) of title I of div. A of Pub. L. 102–484, amending this section and enacting provisions set out as notes above], the term 'low-volume site' means one of the three chemical weapons storage sites in the United States at which there is stored 5 percent or less of the total United States stockpile of unitary chemical weapons.''

REVISION OF CHEMICAL DEMILITARIZATION PROGRAM

Pub. L. 100–180, div. A, title I, §125, Dec. 4, 1987, 101 Stat. 1043, provided that:

''(a) DEFINITION.—For purposes of this section, the term 'chemical stockpile demilitarization program' means the program established by section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), to provide for the destruction of the United States' stockpile of lethal chemical agents and munitions.

''(b) ENVIRONMENTAL IMPACT STATEMENT.—The Secretary of Defense shall issue the final Programmatic Environmental Impact Statement on the chemical stockpile demilitarization program by January 1, 1988. The Environmental Impact Statement shall be prepared in accordance with all applicable laws.

''(c) DISPOSAL TECHNOLOGIES.—(1) Funds appropriated pursuant to this Act [see Tables for classification] or otherwise made available for fiscal year 1988 for the chemical stockpile demilitarization program may not be obligated for procurement or for an Army military

construction project at a military installation or facility inside the continental United States until the Secretary of Defense certifies to Congress in writing that the concept plan under the program includes the following:

''(A) Evaluation of alternate technologies for disposal of the existing stockpile and selection of the technology or technologies to be used for such purpose.

''(B) Full-scale operational verification of the technology or technologies selected for such disposal.

''(C) Maximum protection for public health and the environment.

''(2) The limitation in paragraph (1) shall not apply with respect to the obligation of funds for the technology evaluation or development program.

''(d) ALTERNATIVE CONCEPT PLAN.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an alternative concept plan for the chemical stockpile demilitarization program. The alternative concept plan shall—

''(1) incorporate the requirements of subsections (b) and (c); and

''(2) specify any revised schedule or revised funding requirement necessary to enable the Secretary to meet the requirements of subsections (b) and (c).

The alternative concept plan shall be submitted by March 15, 1988.

''(e) 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.''

§ 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 2430 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.

(Pub. L. 107–314, div. A, title I, § 141, Dec. 2, 2002, 116 Stat. 2477.)

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, § 409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

''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. 107–314, 116 Stat. 2471. See note under section 101 of Title 10, Armed Forces.

§ 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:

(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.

(Pub. L. 103–160, div. A, title XVII, §1701, Nov. 30, 1993, 107 Stat. 1853; Pub. L. 104–201, div. A, title II, §228, Sept. 23, 1996, 110 Stat. 2460.)

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, §228(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(1). Pub. L. 104–201, §228(b)(1), substituted ''program for the Department of Defense'' for ''program for the military departments''.

Subsec. (d)(2). Pub. L. 104–201, §228(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, §228(b)(3), (4), added par. (3) and redesignated former par. (3) as (4).

NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER

Pub. L. 107–296, title XVII, §1708, Nov. 25, 2002, 116 Stat. 2318, provided that: ''There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.''

[For transfer of functions, personnel, assets, and liabilities of the National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 183(2), 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.]

CHEMICAL WARFARE DEFENSE

Pub. L. 105–261, div. A, title II, §247, Oct. 17, 1998, 112 Stat. 1956, provided that:

''(a) REVIEW AND MODIFICATION OF POLICIES AND DOCTRINES.—The Secretary of Defense shall review the policies and doctrines of the Department of Defense on chemical warfare defense and modify the policies and doctrine as appropriate to achieve the objectives set forth in subsection (b).

''(b) OBJECTIVES.—The objectives for the modification of policies and doctrines of the Department of Defense on chemical warfare defense are as follows:

''(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—

''(i) 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 dangerous when taken concurrently with other dangerous exposures referred to in this paragraph);

''(iv) diesel fuel, jet fuel, and other hydrocarbon-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 subparagraph (B), over time.

''(2) To provide for—

''(A) the prevention of and protection against, and the detection (including confirmation) of, exposures to a chemical warfare agent (whether intentional or inadvertent) at levels that, even if not sufficient 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 population; and

''(B) the recording, reporting, coordinating, and retaining of information on possible exposures described in subparagraph (A), including the monitoring 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 mission requirements that are specifically applicable for one or more of the Armed Forces in a protracted conflict 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 research program for determining the effects of exposures to chemical warfare agents of the type described in subsection (b). The research shall be designed to yield results 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 Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives] a report on the results of the review 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 chemical warfare defense.

''(3) The plan for the research program.''

STUDY OF FACILITY FOR TRAINING AND EVALUATION OF CHEMICAL OR BIOLOGICAL WEAPONS RESPONSE PERSONNEL

Pub. L. 104–132, title V, § 521(b), Apr. 24, 1996, 110 Stat. 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 terrorist 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 responsibilities effectively; and

''(C) a facility that recreates urban and suburban locations would provide an especially effective environment 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 advisability of establishing a facility that recreates both an urban environment and a suburban environment in such a way as to permit the effective testing, training, and evaluation in such environments of government personnel who are responsible for responding to the use of chemical and biological weapons in the United States.

''(B) DESCRIPTION OF FACILITY.—The facility considered under subparagraph (A) shall include—

''(i) facilities common to urban environments (including 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 laboratories, small buildings, and dwellings;

''(iii) the capacity to produce controllable releases of chemical and biological agents into sewage, 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 effectiveness of a variety of protective clothing and facilities and survival techniques in urban areas and suburban areas; and

''(vi) the capacity to test and evaluate the effectiveness of variable sensor arrays (including video, audio, meteorological, chemical, and biosensor arrays) in urban areas and suburban areas.

''(C) SENSE OF CONGRESS.—It is the sense of Congress 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 Department of Defense for the testing and evaluation of the use of chemical and biological weapons during any period of armed conflict.''

CONSOLIDATION OF CHEMICAL AND BIOLOGICAL DEFENSE 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 Department of Defense at the United States Army Chemical 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 development of a capability for early detection and warning of and response to—

''(1) potential terrorist use of chemical or biological agents or weapons; and

''(2) emergencies or natural disasters involving industrial chemicals or the widespread outbreak of disease.''

§ 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 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 measures being taken to include realistic nuclear, biological, and chemical warfare simulations in war games, battle simulations, and training exercises.

(5) Measures taken to improve overall management and coordination of the chemical and biological defense program.

(6) 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 conven-

tion, 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.

(Pub. L. 103–160, div. A, title XVII, §1703, Nov. 30, 1993, 107 Stat. 1854; Pub. L. 105–85, div. A, title X, §1078(f), Nov. 18, 1997, 111 Stat. 1915; Pub. L. 109–364, div. A, title X, §1041, Oct. 17, 2006, 120 Stat. 2390.)

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

2006—Subsec. (b)(10). Pub. L. 109–364 added par. (10).
1997—Subsec. (b)(9). Pub. L. 105–85 added par. (9).

§ 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.

(Pub. L. 103–160, div. A, title XVII, §1705, Nov. 30, 1993, 107 Stat. 1856.)

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.

"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. 103–160, 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:

(1) The terms "Chemical Weapons Convention" and "Convention" mean the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, ratified by the United States on April 25, 1997, and entered into force on April 29, 1997.

(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.

(Pub. L. 105–85, div. A, title XIII, §1303, Nov. 18, 1997, 111 Stat. 1951.)

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.).

(Pub. L. 106–113, div. B, § 1000(a)(7) [div. B, title XI, § 1132], Nov. 29, 1999, 113 Stat. 1536, 1501A–493).

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (b), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of this title. 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 enacted as part of the Arms Control and Nonproliferation Act of 1999, and also as part of the Arms Control, Nonproliferation, and Security Assistance Act of 1999, and the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years, 2000 and 2001, and not as part of Pub. L. 91–121, title IV, § 409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

CHAPTER 33—WAR POWERS RESOLUTION

Sec.

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§ 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.

(Pub. L. 93–148, § 2, Nov. 7, 1973, 87 Stat. 555.)

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

Pub. L. 111–84, div. A, title XII, § 1227, Oct. 28, 2009, 123 Stat. 2525, provided that:

''(a) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], or December 31, 2009, whichever occurs later, and every 90 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 Multi-National Force–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 Multi-National Force–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.

''(c) INCLUSION IN OTHER REPORTS.—The report required under subsection (a) and any updates to the report may be included in any other required report on Iraq submitted to Congress by the Secretary of Defense.

''(d) FORM.—The report required under subsection (a), whether or not included in another report on Iraq submitted to Congress by the Secretary of Defense, may include a classified annex.

''(e) 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.''

UNITED STATES POLICY ON IRAQ

Pub. L. 109–163, div. A, title XII, §1227, Jan. 6, 2006, 119 Stat. 3465, as amended by Pub. L. 110–181, div. A, title XII, §1223(a)(1), (b), Jan. 28, 2008, 122 Stat. 373, 374, provided that:

''(a) SHORT TITLE.—This section may be cited as the 'United States Policy in Iraq Act'.

''(b) SENSE OF CONGRESS.—It is the sense of the Congress that, in order to succeed in Iraq—

''(1) members of the United States Armed Forces who are serving or have served in Iraq and their families deserve the utmost respect and the heartfelt gratitude of the American people for their unwavering devotion to duty, service to the Nation, and selfless sacrifice under the most difficult circumstances; the United States Congress supports our troops and supports a successful conclusion to their mission;

''(2) it is important to recognize that the Iraqi people have made enormous sacrifices and that the overwhelming majority of Iraqis want to live in peace and security; and that the Iraqi security forces in a growing number of incidences are fighting side-by-side with coalition forces, are increasing in numbers and improving in military capability;

''(3) the terrorists seeking to prevent the emergence of a secure, stable, peaceful, and democratic Iraq are led by individuals seeking to restore dictatorship in Iraq or who want to advance al Qaeda's broad vision of violently extreme Islam in the Middle East;

''(4) calendar year 2006 should be a period of significant transition to full Iraqi sovereignty, with Iraqi security forces taking the lead for the security of a free and sovereign Iraq, thereby creating the conditions for the phased redeployment of United States forces from Iraq;

''(5) United States military forces should not stay in Iraq any longer than required and the professional military judgment of our senior military should be a key factor in future decisions;

''(6) the Administration should tell the leaders of all groups and political parties in Iraq that they need to make the compromises necessary to achieve the broad-based and sustainable political settlement that is essential for defeating the insurgency in Iraq, within the schedule they set for themselves; and

''(7) the President has committed to continue to explain to Congress and the American people progress toward a successful completion of the mission in Iraq.

''(c) REPORTS TO CONGRESS ON UNITED STATES POLICY AND MILITARY OPERATIONS IN IRAQ.—Not later than 90 days after the date of the enactment of this Act [Jan. 6, 2006], and every three months thereafter until all United States combat brigades have redeployed from Iraq, the President shall submit to Congress a report on United States policy and military operations in Iraq. To the maximum extent practicable, the report required in (c) shall be unclassified, with a classified annex if necessary. Each report shall include to the extent practical, the following information:

''(1) The current military mission and the diplomatic, political, economic, and military measures that are being or have been undertaken to successfully complete or support that mission, including:

''(A) Efforts to convince Iraq's main communities to make the compromises necessary for a broad-based and sustainable political settlement.

''(B) Engaging the international community and the region in efforts to stabilize Iraq and to forge a broad-based and sustainable political settlement.

''(C) Strengthening the capacity of Iraq's government ministries.

''(D) Accelerating the delivery of basic services.

''(E) Securing the delivery of pledged economic assistance from the international community and additional pledges of assistance.

''(F) Training Iraqi security forces and transferring additional security responsibilities to those forces and the government of Iraq.

''(2) Whether the Iraqis have made the compromises necessary to achieve the broad-based and sustainable political settlement that is essential for defeating the insurgency in Iraq, including—

''(A) enacting a broadly-accepted hydrocarbon law that equitably shares revenue among all Iraqis;

''(B) adopting laws necessary for the conduct of provincial and local elections, taking steps to implement such laws, and setting a schedule to conduct provincial and local elections;

''(C) reforming current laws governing the de-Baathification process in a manner that encourages national reconciliation;

''(D) amending the Constitution of Iraq in a manner that encourages national reconciliation;

''(E) allocating and beginning expenditure of $10 billion in Iraqi revenues for reconstruction projects, including delivery of essential services, and implementing such reconstruction projects on an equitable basis; and

''(F) making significant efforts to plan and implement disarmament, demobilization, and reintegration programs relating to Iraqi militias.

''(3) A detailed description of the Joint Campaign Plan, or any subsequent revisions, updates, or documents that replace or supersede the Joint Campaign Plan, including goals, phases, or other milestones contained in the Joint Campaign Plan. Specifically, the description shall include the following:

''(A) An explanation of conditions required to move through phases of the Joint Campaign Plan, in particular those conditions that must be met in order to provide for the transition of additional security responsibility to the Iraqi Security Forces, and the measurements used to determine progress.

''(B) An assessment of which conditions in the Joint Campaign Plan have been achieved and which conditions have not been achieved. The assessment of those conditions that have not been achieved shall include a discussion of the factors that have precluded progress.

''(C) A description of any companion or equivalent plan of the Government of Iraq used to measure progress for Iraqi Security Forces undertaking joint operations with Coalition Forces.

''(4) To the extent that these conditions are not covered under paragraph (3), the following should also be addressed:

''(A) The number of battalions of the Iraqi Armed Forces that must be able to operate independently or to take the lead in counterinsurgency operations and the defense of Iraq's territory.

''(B) The number of Iraqi special police units that must be able to operate independently or to take the lead in maintaining law and order and fighting the insurgency.

''(C) The number of regular police that must be trained and equipped to maintain law and order.

''(D) The ability of Iraq's Federal ministries and provincial and local governments to independently sustain, direct, and coordinate Iraq's security forces.

''(5) The criteria to be used to evaluate progress toward meeting such conditions.

''(6) A plan for meeting such conditions, an assessment of the extent to which such conditions have been met, information regarding variables that could alter that plan, and the reasons for any subsequent changes to that plan.

''(7) An assessment of the levels of United States Armed Forces required in Iraq for the six-month period following the date of the report, the missions to be undertaken by the Armed Forces in Iraq for such period, and the incremental costs or savings of any proposed changes to such levels or missions.

''(8) A description of the range of conditions that could prompt changes to the levels of United States Armed Forces required in Iraq for the six-month period following the date of the report or the missions to be undertaken by the Armed Forces in Iraq for such period, including the status of planning for such changes to the levels or missions of the Armed Forces in Iraq.

''(d) CONGRESSIONAL BRIEFINGS REQUIRED.—Not later than 30 days after the submission of the first report under subsection (c) on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 [Jan. 28, 2008], the Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall meet with the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] to brief such committees on the matters described in paragraphs (7) and (8) of subsection (c) contained in the report. Not later than 30 days after the submission of each subsequent report under subsection (c), appropriate senior officials of the Department of Defense shall meet with the congressional defense committees to brief such committees on the matters described in paragraphs (7) and (8) of subsection (c) contained in the report.''

[Pub. L. 110–181, div. A, title XII, §1223(a)(2), Jan. 28, 2008, 122 Stat. 374, provided that: ''The amendments made by paragraph (1) [amending section 1227 of Pub. L. 109–163, set out above] shall apply with respect to each report required to be submitted to Congress under section 1227(c) of the National Defense Authorization Act for Fiscal Year 2006 [Pub. L. 109–163] on or after the date of the enactment of this Act [Jan. 28, 2008].'']

[Memorandum of President of the United States, Apr. 6, 2006, 71 F.R. 19427, assigned to the Secretary of State the functions of the President under section 1227(c) of Pub. L. 109–163, set out above.]

AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST IRAQ RESOLUTION OF 2002

Pub. L. 107–243, Oct. 16, 2002, 116 Stat. 1498, provided that:

''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 105–235 (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 'material and unacceptable breach of its international obligations' and urged the President 'to take appropriate action, in accordance with the Constitution and relevant laws of the United States, to bring Iraq into compliance with its international obligations';

''Whereas Iraq both poses a continuing threat to the national security of the United States and international peace and security in the Persian Gulf region and remains in material and unacceptable breach of its international obligations by, among other things, continuing to possess and develop a significant chemical and biological weapons capability, actively seeking a nuclear weapons capability, and supporting and harboring terrorist organizations;

''Whereas Iraq persists in violating resolution [sic] of the United Nations Security Council by continuing to engage in brutal repression of its civilian population thereby threatening international peace and security in the region, by refusing to release, repatriate, or account for non-Iraqi citizens wrongfully detained by Iraq, including an American serviceman, and by failing to return property wrongfully seized by Iraq from Kuwait;

''Whereas the current Iraqi regime has demonstrated its capability and willingness to use weapons of mass destruction against other nations and its own people;

''Whereas the current Iraqi regime has demonstrated its continuing hostility toward, and willingness to attack, the United States, including by attempting in 1993 to assassinate former President Bush and by firing on many thousands of occasions on United States and Coalition Armed Forces engaged in enforcing the resolutions of the United Nations Security Council;

''Whereas members of al Qaida, an organization bearing responsibility for attacks on the United States, its citizens, and interests, including the attacks that occurred on September 11, 2001, are known to be in Iraq;

''Whereas Iraq continues to aid and harbor other international terrorist organizations, including organizations that threaten the lives and safety of United States citizens;

''Whereas the attacks on the United States of September 11, 2001, underscored the gravity of the threat posed by the acquisition of weapons of mass destruction by international terrorist organizations;

''Whereas Iraq's demonstrated capability and willingness to use weapons of mass destruction, the risk that the current Iraqi regime will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so, and the extreme magnitude of harm that would result to

the United States and its citizens from such an attack, combine to justify action by the United States to defend itself;

''Whereas United Nations Security Council Resolution 678 (1990) authorizes the use of all necessary means to enforce United Nations Security Council Resolution 660 (1990) and subsequent relevant resolutions and to compel Iraq to cease certain activities that threaten international peace and security, including the development of weapons of mass destruction and refusal or obstruction of United Nations weapons inspections in violation of United Nations Security Council Resolution 687 (1991), repression of its civilian population in violation of United Nations Security Council Resolution 688 (1991), and threatening its neighbors or United Nations operations in Iraq in violation of United Nations Security Council Resolution 949 (1994);

''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 in December 1991, Congress expressed its sense that it 'supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 687 as being consistent with the Authorization of Use of Military Force Against Iraq Resolution (Public Law 102–1),' that Iraq's repression of its civilian population violates United Nations Security Council Resolution 688 and 'constitutes a continuing threat to the peace, security, and stability of the Persian Gulf region,' and that Congress, 'supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 688';

''Whereas the Iraq Liberation Act of 1998 (Public Law 105–338) [22 U.S.C. 2151 note] expressed the sense of Congress that it should be the policy of the United States to support efforts to remove from power the current Iraqi regime and promote the emergence of a democratic government to replace that regime;

''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 the just 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. SUPPORT FOR UNITED STATES DIPLOMATIC EFFORTS.

''The Congress of the United States supports the efforts by the President to—

''(1) strictly enforce through the United Nations Security Council all relevant Security Council resolutions regarding Iraq and encourages him in those efforts; and

''(2) obtain prompt and decisive action by the Security Council to ensure that Iraq abandons its strategy of delay, evasion and noncompliance and promptly and strictly complies with all relevant Security Council resolutions regarding Iraq.

''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 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 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 com-

pleted, including those actions described in section 7 of the Iraq Liberation Act of 1998 (Public Law 105–338) [22 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 93–148) [50 U.S.C. 1541 et seq.], 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 the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102–1) [set out in a note below] is included in the report required by this section, such report shall be considered as meeting the requirements of section 3 of such resolution.''

AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST SEPTEMBER 11 TERRORISTS

Pub. L. 107–40, Sept. 18, 2001, 115 Stat. 224, provided that:

''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 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 supercedes 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

Pub. L. 106–65, div. A, title XII, § 1232, Oct. 5, 1999, 113 Stat. 788, as amended by Pub. L. 107–107, div. A, title XII, § 1222, Dec. 28, 2001, 115 Stat. 1253, provided that:

''(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.

''[(b) Repealed. Pub. L. 107–107, div. A, title XII, § 1222, Dec. 28, 2001, 115 Stat. 1253.]''

INVOLVEMENT OF ARMED FORCES IN HAITI

Pub. L. 103–423, Oct. 25, 1994, 108 Stat. 4358, provided that:

''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 regarding 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 goal 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 else-

where, 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

Pub. L. 103–160, div. A, title XV, §1512, Nov. 30, 1993, 107 Stat. 1840, provided that:

''(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,' as 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 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

Pub. L. 103–139, title VIII, §8151, Nov. 11, 1993, 107 Stat. 1475, provided that:

''(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 unanimous 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 provision of—

''(A) United States military logistical support services to United Nations forces; and

''(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

Pub. L. 102–1, Jan. 14, 1991, 105 Stat. 3, as amended by Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title II, §207], Nov. 29, 1999, 113 Stat. 1536, 1501A–422, provided that:

''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 his 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. 1541 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

Pub. L. 98–525, title III, §310, Oct. 19, 1984, 98 Stat. 2516, 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 re-

quire 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(h) [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 [Oct. 12, 1984] 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

Pub. L. 98–119, Oct. 12, 1983, 97 Stat. 805, provided that:

''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. 1541 et seq.].

''(b) The Congress determines that the requirements of section 4(a)(1) of the War Powers Resolution [50 U.S.C. 1543(a)(1)] became operative on August 29, 1983. Consistent with section 5(b) of 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. 1543(c)], the President shall report periodically to the Congress with respect to the situation in Lebanon, but in no event shall he report less often 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 carry out 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 thereupon 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.

''(d) 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 joint 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 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 event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.''

ADHERENCE TO WAR POWERS RESOLUTION

Pub. L. 96–342, title X, § 1008, Sept. 8, 1980, 94 Stat. 1122, provided that: ''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 expedited 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 congressional consultation process specified by such Resolution be utilized strictly according to the terms of the War Powers Resolution.''

DELEGATION OF CERTAIN REPORTING AUTHORITY

Memorandum of President of the United States, July 2, 2004, 69 F.R. 43723, provided:

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by section 4 of the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107–243 [set out in a note above], and by section 3 of the Authorization for Use of Military Force Against Iraq Resolution, Public Law 102–1 [set out in a note above], to make the specified reports to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 1542. Consultation; initial and regular consultations

The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

(Pub. L. 93–148, § 3, Nov. 7, 1973, 87 Stat. 555.)

§ 1543. Reporting requirement

(a) Written report; time of submission; circumstances necessitating submission; information reported

In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(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.

(Pub. L. 93–148, § 4, Nov. 7, 1973, 87 Stat. 555.)

§ 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 pursuant to section 1543(a)(1) of this title, whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Concurrent resolution for removal by President of United States Armed Forces

Notwithstanding subsection (b) of this section, at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

(Pub. L. 93–148, § 5, Nov. 7, 1973, 87 Stat. 556.)

§ 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 dis-

agreement. 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.

(Pub. L. 93–148, § 6, Nov. 7, 1973, 87 Stat. 557.)

§ 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 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 event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

(Pub. L. 93–148, § 7, Nov. 7, 1973, 87 Stat. 557.)

§ 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.

(Pub. L. 98–164, title X, § 1013, Nov. 22, 1983, 97 Stat. 1062.)

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 wherein 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 authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to November 7, 1973, and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) 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.

(Pub. L. 93–148, § 8, Nov. 7, 1973, 87 Stat. 558.)

§ 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.

(Pub. L. 93–148, § 9, Nov. 7, 1973, 87 Stat. 559.)

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.
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SUBCHAPTER IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF PRESIDENT

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1651. Other laws, powers and authorities conferred thereby, and actions taken thereunder; Congressional studies.

SUBCHAPTER I—TERMINATING EXISTING DECLARED EMERGENCIES

§ 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.

(Pub. L. 94–412, title I, § 101, Sept. 14, 1976, 90 Stat. 1255.)

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 2667 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 1742 of the Appendix to this title, and enacting provisions set out below] may be cited as the 'National Emergencies Act'.''

SAVINGS PROVISION

Section 501(h) of Pub. L. 94–412 provided that: ''This section [amending section 1481 of Title 8, Aliens and Nationality and section 2667 of Title 10, Armed Forces, 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;

''(2) any action or proceeding based on any act committee prior to repeal; or

''(3) any rights or duties that matured or penalties that were incurred prior to repeal.''

SUBCHAPTER II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

§ 1621. Declaration of national emergency by President; publication in Federal Register; effect 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.

(Pub. L. 94–412, title II, § 201, Sept. 14, 1976, 90 Stat. 1255.)

PROC. 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 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.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, I 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, 359, 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 PROC. NO. 7463

Notice of President of the United States, dated Sept. 10, 2009, 74 F.R. 46883, 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 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, 2009. Therefore, I am continuing in effect for an additional year the national emergency the former President 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 Aug. 28, 2008, 73 F.R. 51211.

Notice of President of the United States, dated Sept. 12, 2007, 72 F.R. 52465.

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.

Notice of President of the United States, dated Sept. 10, 2004, 69 F.R. 55313.

Notice of President of the United States, dated Sept. 10, 2003, 68 F.R. 53665.

Notice of President of the United States, dated Sept. 12, 2002, 67 F.R. 58317.

§ 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 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 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 re-

port 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.

(Pub. L. 94–412, title II, § 202, Sept. 14, 1976, 90 Stat. 1255; Pub. L. 99–93, title VIII, § 801, Aug. 16, 1985, 99 Stat. 448.)

AMENDMENTS

1985—Subsecs. (a) to (c). Pub. L. 99–93 substituted ''there is enacted into law a joint resolution terminating the emergency'' for ''Congress terminates the emergency by concurrent resolution'' in par. (1) of subsec. (a), and substituted ''joint resolution'' for ''concurrent resolution'' wherever appearing in second sentence of subsec. (a), subsec. (b), and pars. (1) to (4) of subsec. (c).

SUBCHAPTER III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

§ 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.

(Pub. L. 94–412, title III, § 301, Sept. 14, 1976, 90 Stat. 1257.)

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.

(Pub. L. 94–412, title IV, § 401, Sept. 14, 1976, 90 Stat. 1257.)

DELEGATION OF FUNCTIONS

Delegations of congressional reporting functions of President under subsec. (c) of this section were contained in the following:

Ex. Ord. No. 13441, § 6, Aug. 1, 2007, 72 F.R. 43500.

Ex. Ord. No. 13396, § 6, Feb. 7, 2006, 71 F.R. 7391, listed in a table under section 1701 of this title.

Ex. Ord. No. 13348, § 7, July 22, 2004, 69 F.R. 44887, listed in a table under section 1701 of this title.

Ex. Ord. No. 13338, § 12, May 11, 2004, 69 F.R. 26754, listed in a table under section 1701 of this title.

Ex. Ord. No. 13313, § 1, July 31, 2003, 68 F.R. 46073, set out in a note under section 301 of Title 3, The President.

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) Act of June 30, 1949 (41 U.S.C. 252);

(2) Section 3727(a)–(e)(1) of title 31;

(3) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(4) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431 et seq.);

(5) Section 2304(a)(1)[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.

(Pub. L. 94–412, title V, § 502, Sept. 14, 1976, 90 Stat. 1258; Pub. L. 95–223, title I, § 101(d), Dec. 28, 1977, 91 Stat. 1625; Pub. L. 96–513, title V, § 507(b), Dec. 12, 1980, 94 Stat. 2919; Pub. L. 105–362, title IX, § 901(r)(2), Nov. 10, 1998, 112 Stat. 3291; Pub. L. 107–314, div. A, title X, § 1062(*o*)(1), Dec. 2, 2002, 116 Stat. 2652.)

REFERENCES IN TEXT

Act of June 30, 1949 (41 U.S.C. 252), referred to in subsec. (a)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended, known as the Federal Property and Administrative Services Act of 1949. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works. Section 302 of the Act is classified to section 252 of Title 41, Public Contracts.

Public Law 85–804, referred to in subsec. (a)(4), is Pub. L. 85–804, Aug. 28, 1958, 72 Stat. 972, as amended, which is classified generally to chapter 29 (§ 1431 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

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 public 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

In subsec. (a)(2), ''Section 3727(a)–(e)(1) of title 31'' substituted for ''Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

[1] See References in Text note below.

[2] So in original. The semicolon probably should be a period.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 struck out par. (2), which read ''Act of April 28, 1942 (40 U.S.C. 278b);'', and redesignated pars. (3) to (7) as (1) to (5), respectively.

1998—Subsec. (a)(6). Pub. L. 105–362 substituted ''1431 et seq.'' for ''1431–1435''.

1980—Subsec. (a)(8). Pub. L. 96–513 struck out par. (8) which made reference to sections 3313, 6386(c), and 8313 of title 10.

1977—Subsec. (a)(1). Pub. L. 95–223 struck out par. (1) which read as follows: ''Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b));''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of Title 10, Armed Forces.

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.

(Pub. L. 95–223, title II, § 202, Dec. 28, 1977, 91 Stat. 1626.)

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–96, § 1, Oct. 16, 2007, 121 Stat. 1011, provided that: ''This Act [amending section 1705 of this title and enacting provisions set out as a note under section 1705 of this title] may be cited as the 'International Emergency Economic Powers Enhancement Act'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–353, § 1, Oct. 13, 2006, 120 Stat. 2015, provided that: ''This Act [amending provisions set out as a note below] may be cited as the 'North Korea Nonproliferation Act of 2006'.''

Pub. L. 109–293, § 1, Sept. 30, 2006, 120 Stat. 1344, provided that: ''This Act [amending section 5318A of Title 31, Money and Finance, enacting 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 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 2797b of Title 22, Foreign Relations and Intercourse] may be cited as the 'Iran Nonproliferation Amendments Act of 2005'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–24, §1, Aug. 3, 2001, 115 Stat. 199, provided that: ''This Act [enacting and amending provisions set out as notes below] may be cited as the 'ILSA Extension Act of 2001'.''

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 208 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

Pub. L. 110–174, Dec. 31, 2007, 121 Stat. 2516, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Sudan Accountability and Divestment Act of 2007'.

''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 (41 U.S.C. 403).

''(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 109–344; 50 U.S.C. 1701 note); and

''(B) marginalized areas in Northern Sudan described in section 4(9) 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, chromite, 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 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(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.—

''(1) 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.

''(2) 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:

''(1) 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;

''(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 OF 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 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.

''It is 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 plan 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 section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104), if—

''(1) the fiduciary makes such determination using credible information that is available to the public; and

''(2) such divestment or avoidance of investment is conducted in accordance with section 2509.94–1 of title 29, Code of Federal Regulations (as in effect on the day before the date of the enactment of this Act [Dec. 31, 2007]).

''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 upon 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 (41 U.S.C. 421) each contractor that is debarred, suspended, proposed for debarment or suspension, 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 section 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 (41 U.S.C. 421) 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

''(3) the Darfur Peace and Accountability Act of 2006 (Public Law 109–344; 50 U.S.C. 1701 note).

''(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

Pub. L. 109–344, Oct. 13, 2006, 120 Stat. 1869, provided that:

''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 for Sudan); and

''(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 militias 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 militiamen disarmed and arrested for verification, establishing an International Commission of Inquiry on Darfur to investigate violations of international humanitarian and human rights laws, and threatening sanctions 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.

''(6) The Report of the International Commission of Inquiry on Darfur, submitted to the United Nations Secretary-General on January 25, 2005, established that the 'Government of the Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law,' that 'these acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity,' and that officials of the Government of Sudan and other individuals may have acted with 'genocidal intent'.

''(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 challenging the commitment of all Sudanese to the Comprehensive Peace Agreement for Sudan.

''(11) On January 12, 2006, the African Union Peace and Security Council issued a communique 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.

''(12) On February 3, 2006, the United Nations Security Council issued a Presidential Statement authorizing the initiation of contingency planning for a transition from 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.

''(14) On March 24, 2006, the United Nations Security Council passed Security Council Resolution 1663 (2006), which—

''(A) welcomes the African Peace and Security Council's March 10, 2006 communique; 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.

''(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), unanimously 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 Jalul 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 supporting the implementation of the Darfur Peace Agreement upon the expiration of AMIS' mandate but in any event no later than 31 December 2006', and that UNMIS '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.

''(21) Since 1993, the Secretary of State has determined, pursuant to section 6(j) of the Export Administration Act of 1979 (50 App. U.S.C. 2405(j)), that Sudan is a country, the government of which has repeatedly provided support for acts of international terrorism, thereby restricting United States assistance, defense exports and sales, and financial and other transactions with the Government of Sudan.

''SEC. 4. SENSE OF CONGRESS.

''It is the sense of Congress that—

''(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 has honored pledges to cease attacks upon civilians, demobilize and demilitarize the Janjaweed and associated militias, and grant free and unfettered access for deliveries of humanitarian assistance in the Darfur region;

''(7) the President should use all necessary and appropriate diplomatic means to ensure the full discharge of the responsibilities of the Committee of the United Nations Security Council and the panel of experts 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 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 reconstruction, restitution, justice, and reconciliation; and

''(15) the new leadership of the Sudan People's Liberation Movement (referred to in this paragraph as 'SPLM') should—

''(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 undermine 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 OR OTHER INDIVIDUALS.—It is the sense of Congress, that the President should immediately impose the sanctions described in section 6(c) of the Comprehensive Peace in Sudan Act of 2004 [Pub. L. 108–497, set out below], as added by subsection (a), against any individual, including the Janjaweed commanders and coordinators, 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'.

''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 assistance, training, command and control, aerial surveillance, and intelligence.

''(b) CONDITIONS.—

''(1) IN GENERAL.—Assistance provided under subsection (a)—

''(A) shall be used only in the Darfur region; and

''(B) shall not be provided until AMIS has agreed 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 permit the use of such assistance for any purposes other than those for which such assistance was furnished, unless the consent of the President has first been obtained, and written assurances reflecting all of the forgoing 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 Foreign Affairs] of the House of Representatives in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1).

''(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 peacekeeping 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, communications, training, technical assistance, command and control, aerial surveillance, and intelligence 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. 1544(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 Government 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 activities 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 civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access 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 demobilization program;

''(B) the shipment of non-lethal assistance necessary to carry out elements of the Comprehensive Peace Agreement for Sudan or the Darfur Peace Agreement; or

''(C) the shipment of military assistance necessary to carry out elements of an agreement referred 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 VIOLATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTIONS 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 assistance (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 Council Resolutions 1556 (2004) and 1591 (2005).

''(2) WAIVER.—The President may waive the application of paragraph (1) if the President determines, and certifies to the appropriate congressional committees, that such waiver is in the national interests of the United States.

''SEC. 7. CONTINUATION OF RESTRICTIONS.

''(a) IN GENERAL.—Restrictions against the Government of Sudan that were imposed pursuant to Executive Order No. 13067 of November 3, 1997 (62 Federal Register 59989) [listed in a table below], title III and sections 508, 512, 527, and 569 of the Foreign Operations, Export Financing, and Related Programs Appropriations 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, demobilize, and demilitarize the Janjaweed and all militias allied with the Government of Sudan;

''(3) adhere to all associated United Nations Security Council Resolutions, including Security Council Resolutions 1556 (2004), 1564 (2004), 1591 (2005), 1593 (2005), 1663 (2006), 1665 (2006), and 1706 (2006);

''(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 implementing 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 program 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. 120.1 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 Foreign Relations of the Senate and the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives of such determination; and

''(B) small arms and ammunition under categories I and III of the United States Munitions List (22 C.F.R. 121.1 et seq.) if the President—

''(i) determines that the provision of such equipment is essential to the national security interests of the United States; and

''(ii) consistent with the procedures set forth in section 614(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)(3)), notifies the Committee on Foreign Relations of the Senate and the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives of such determination.

''(2) END USE ASSURANCES.—For each item exported pursuant to this subsection or subsection (c), the President shall include with the notification to Congress under subparagraphs (A)(ii) and (B)(ii) of paragraph (1)—

''(A) an identification of the end users to which the provision of assistance is being made;

''(B) the dollar value of the items being provided;

''(C) a description of the items being provided; and

''(D) a description of the end use verification procedures that will be applied to such items, including—

''(i) any special assurances obtained from the Government of Southern Sudan or other authorized end users regarding such equipment; and

''(ii) the end use or retransfer controls that will be applied to any items provided under this subsection.

''(3) WAIVER AUTHORITY.—Section 40 of the Arms Export Control Act (22 U.S.C. 2780) shall not apply to assistance provided under paragraph (1).

''(e) EXCEPTION TO PROHIBITIONS IN EXECUTIVE ORDER NUMBER 13067.—Notwithstanding any other provision of law, the prohibitions set forth with respect to Sudan in Executive Order No. 13067 (62 Fed. Reg. 59989) [listed in a table below] shall not apply to activities or related transactions with respect to Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, or marginalized areas in and around Khartoum.

''SEC. 9. REPORTING REQUIREMENTS.

''[Amended Pub. L. 107–245, set out below.]''

[Functions of President under section 6(a), (b), (f) of Pub. L. 109–344, set out above, assigned to Secretary of State by Memorandum of President of the United States, Jan. 25, 2007, 72 F.R. 5149.]

[Functions of President under sections 7 and 8 of Pub. L. 109–344, set out above, assigned to Secretary of State by section 4(e) of Ex. Ord. No. 13412, Oct. 13, 2006, 71 F.R. 61370, listed in a table below.]

CODIFICATION OF SANCTIONS AGAINST IRAN

Pub. L. 109–293, title I, § 101, Sept. 30, 2006, 120 Stat. 1344, provided that:

''(a) CODIFICATION OF SANCTIONS.—Except as otherwise provided in this section, United States sanctions with respect to Iran imposed pursuant to sections 1 and 3 of Executive Order No. 12957 [listed in a table below], sections 1(e), (1)(g), and (3) of Executive Order No. 12959 [listed in a table below], and sections 2, 3, and 5 of Executive Order No. 13059 [listed in a table below] (relating to exports and certain other transactions with Iran) as in effect on January 1, 2006, shall remain in effect. The President may terminate such sanctions, in whole or in part, if the President notifies Congress at least 15 days in advance of such termination. In the event of exigent circumstances, the President may exercise the authority set forth in the preceding sentence without regard to the notification requirement stated therein, except that such notification shall be provided as early as practicable, but in no event later than three working days after such exercise of authority.

''(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)(A)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(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

Pub. L. 110–286, July 29, 2008, 122 Stat. 2632, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008'.

''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.

''(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 updates done on 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 leadership 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 not 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 $500 million in hardwoods in 2006 but NGOs estimate the true figure to exceed $900 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 ¼ 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 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.

''(12) The United Nations special envoy Ibrahim Gambari traveled to Burma from September 29, 2007, through October 2, 2007, holding meetings with SPDC leader General Than Shwe and democracy advocate Aung San Suu Kyi in an effort to promote dialogue between the SPDC and democracy advocates.

''(13) 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; and

''(B) any successor, subunit, or subsidiary of any person described in subparagraph (A).

''(5) SPDC.—The term 'SPDC' means the State Peace and Development Council, the ruling military regime in Burma.

''(6) UNITED STATES PERSON.—The term 'United States person' means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or any person in the United States.

''SEC. 4. STATEMENT OF POLICY.

''It is the policy of the United States to—

''(1) condemn the continued repression carried out by the SPDC;

''(2) work with the international community, especially the People's Republic of China, India, Thailand, and ASEAN, to foster support for the legitimate democratic aspirations of the people of Burma and to coordinate efforts to impose sanctions on those directly responsible for human rights abuses in Burma;

''(3) provide all appropriate support and assistance to aid a peaceful transition to constitutional democracy in Burma;

''(4) support international efforts to alleviate the suffering of Burmese refugees and address the urgent humanitarian needs of the Burmese people; and

''(5) identify individuals responsible for the repression of peaceful political activity in Burma and hold them accountable for their actions.

''SEC. 5. SANCTIONS.

''(a) VISA BAN.—

''(1) IN GENERAL.—The following persons shall be ineligible for a visa to travel to the United States:

''(A) Former and present leaders of the SPDC, the Burmese military, or the USDA.

''(B) Officials of the SPDC, the Burmese military, or the USDA involved in the repression of peaceful political activity or in other gross violations of human rights 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 who provide substantial economic and political support for the SPDC, the Burmese military, or the USDA.

''(D) The immediate family members of any person described in subparagraphs (A) through (C).

''(2) WAIVER.—The President may waive the visa ban described in paragraph (1) only if the President determines and certifies in writing to Congress that travel by the person seeking such a waiver is in the national interests of the United States.

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to conflict with the provisions of section 694 of the Consolidated Appropriations Act, 2008 (Public Law 110–161) [121 Stat. 2366], nor shall this subsection be construed to make ineligible for a visa members of ethnic groups in Burma

now or previously opposed to the regime who were forced to provide labor or other support to the Burmese military and who are otherwise eligible for admission into the United States.

''(b) FINANCIAL SANCTIONS.—

''(1) BLOCKED PROPERTY.—No property or interest in property belonging to a person described in subsection (a)(1) may be transferred, paid, exported, withdrawn, or otherwise dealt with if—

''(A) the property is located in the United States or within the possession or control of a United States person, including the overseas branch of a United States person; or

''(B) 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 Attorney 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 5312 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.

''(4) 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.

''(e) 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.

''(f) EXCEPTIONS.—

''(1) IN GENERAL.—The prohibitions and restrictions described in subsections (b) and (c) shall not apply to medicine, medical equipment or supplies, food or feed, or any other form of humanitarian assistance provided to Burma.

''(2) REGULATORY EXCEPTIONS.—For the following purposes, the Secretary of State may, by regulation, authorize exceptions to the prohibition and restrictions described in subsection (a), and the Secretary of the Treasury may, by regulation, authorize exceptions to the prohibitions and restrictions described in subsections (b) and (c)—

''(A) to permit the United States and Burma to operate their diplomatic missions, and to permit the United States to conduct other official United States Government business in Burma;

''(B) to permit United States citizens to visit Burma; and

''(C) to permit the United States to comply with the United Nations Headquarters Agreement and other applicable international agreements.

''(g) PENALTIES.—Any person who violates any prohibition or restriction imposed pursuant to subsection (b) or (c) shall 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.

''(i) 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.

''SEC. 6. AMENDMENTS TO THE BURMESE FREEDOM AND DEMOCRACY ACT OF 2003.

''(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 5th [sic] renewal resolution enacted into law after the date of the enactment of the Burmese Freedom and Democracy Act of 2003 [July 28, 2003], or 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'affairs 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) IN GENERAL.—Notwithstanding 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 expert 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) Illegalities, 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 and 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 Ways and Means of the House of the [sic] Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Finance 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) DEFINITIONS.—For the purpose of this section:

''(1) SENIOR BURMESE OFFICIALS.—The term 'senior Burmese officials' shall mean individuals covered under section 5(d)(1) of this Act.

''(2) OTHER TERMS.—Other terms shall be defined under the authority of and consistent with section 5(c)(2) of this Act.

''(c) FORM.—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 30 days of 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 nonoperated, 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; and

''(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.''

Pub. L. 108–61, July 28, 2003, 117 Stat. 864, as amended by Pub. L. 109–251, §1, Aug. 1, 2006, 120 Stat. 654; Pub. L. 110–286, §§6(a)–(b)(2), (c), 9(b), July 29, 2008, 122 Stat. 2638, 2642–2644; Pub. L. 111–42, title I, §101, July 28, 2009, 123 Stat. 1963, provided that:

''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 28, 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.

''(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 and 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 other producers and 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 3(a)(3) 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) known narcotics traffickers 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 (USDA); and

''(F) any successor entity for the SPDC, UMEHI, MEC, or USDA.

''(3) 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 706(2) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) [22 U.S.C. 2291j–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 in the United States for narcotics trafficking, (ii) concrete and measurable actions to stem the flow of illicit drug money into Burma's banking system and economic enterprises, and (iii) actions to stop the manufacture and export of methamphetamines.

''(4) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this subsection, the term 'appropriate congressional committees' means the Committees on Foreign Relations and Appropriations of the Senate and the Committees on International Relations [now Foreign Affairs] and Appropriations of the House of Representatives.

''(b) WAIVER AUTHORITIES.—The President may waive the restrictions described in this section or section 3A(b)(1) or (c)(1) for any or all articles that are subject to such restrictions if the President determines and notifies 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 that to do so is in the national interest of the United States.

''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 'Burmese 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-Burmese 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 jadeite classifiable under heading 7103 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 1202 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.

''(b) 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 Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 [July 29, 2008], the President shall prohibit the importation into the United States of any Burmese covered article.

''(2) 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 prohibition under paragraph (1).

''(3) OTHER ACTIONS.—Beginning on the date of the enactment of this Act [July 28, 2003], the President shall take all appropriate actions to seek the following:

''(A) The issuance of a draft waiver decision by the Council for Trade in Goods of the World Trade Organization granting a waiver of the applicable obligations of the United States under the World Trade Organization with respect to the provisions of this section and any measures taken to implement this section.

''(B) The adoption of a resolution by the United Nations General Assembly expressing the need to address trade in Burmese covered articles and calling for the creation and implementation of a workable certification scheme for non-Burmese covered articles to prevent the trade in Burmese covered articles.

''(c) REQUIREMENTS FOR IMPORTATION OF NON-BURMESE COVERED ARTICLES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), 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 Burmese 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-Burmese covered article that—

''(A) the exporter of the non-Burmese 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 Burmese covered articles; and

''(B) the importer of the non-Burmese 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-Burmese covered article for a period of not less than 5 years from the date of entry of the non-Burmese 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-Burmese 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 Burmese covered articles.

''(B) MEASURES DESCRIBED.—The measures referred to in subparagraph (A) are the following:

''(i) With respect to exportation from the country of jadeite or rubies 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-Burmese 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.

''(vi) Full cooperation by the country with the United Nations or other official international organizations that seek to prevent trade in Burmese covered articles.

''(3) 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).

''(d) 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.

''(e) 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.

''(f) 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 the term in section 3(6) of the Clean Diamond Trade Act (Public Law 108–19; 19 U.S.C. 3902(6)).

''(g) REPORT.—

''(1) IN GENERAL.—Not later than 180 days 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 President shall transmit to the appropriate congressional committees 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.

''(h) 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.

''(a) REPORTING REQUIREMENT.—Not later than 60 days after the date of enactment of this Act [July 28, 2003], 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.

''(b) 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.

''(c) 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.

''(a) OPPOSITION TO ASSISTANCE TO BURMA.—The Secretary of the Treasury shall instruct the United States executive director to each appropriate international fi-

nancial 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.

''(b) 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.

''(a) IN GENERAL.—

''(1) VISA BAN.—The President is authorized to deny visas and entry to the former and present leadership of the SPDC or the Union Solidarity Development Association.

''(2) 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 obtaining a visa by the European Union for the reason described in paragraph (1) and those banned from receiving a visa from the United States.

''(b) 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.

''(a) 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 SPDC 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

''(C) the impact of actions relating to trade take [sic] 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.

''SEC. 9. DURATION OF SANCTIONS.

''(a) TERMINATION BY REQUEST FROM DEMOCRATIC BURMA.—The President may terminate any provision in this Act upon the request of a democratically elected government in Burma, provided that all the conditions in section 3(a)(3) have been met.

''(b) CONTINUATION OF IMPORT SANCTIONS.—

''(1) 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 [subsection].

''(2) 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).

''(3) 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].

''(4) RULE OF CONSTRUCTION.—For purposes of this subsection, any reference to section 3(a)(1) shall be deemed to include a reference to section 3A(b)(1) and (c)(1).

''(c) RENEWAL RESOLUTIONS.—

''(1) IN GENERAL.—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.'.

''(2) PROCEDURES.—

''(A) IN GENERAL.—A renewal resolution—

''(i) may be introduced in either House of Congress by any member of such House at any time within the 90-day period before the expiration of the import restrictions contained in section 3(a)(1) and section 3A(b)(1) and (c)(1); and

''(ii) the provisions of subparagraph (B) shall apply.

''(B) EXPEDITED CONSIDERATION.—The provisions of 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)) apply to a renewal resolution under this Act as if such resolution were a resolution described in section 152(a) of the Trade Act of 1974.''

[For effective date of amendment by Pub. L. 110–286, § 6(b)(1), (2), see section 6(b)(3) of Pub. L. 110–286, set out above.]

[Certain powers of President under section 4 of Pub. L. 108–61, set out above, delegated to Secretary of the Treasury by section 6 of Ex. Ord. No. 13448, Oct. 18, 2007, 72 F.R. 60225, listed in a table below.]

[Pub. L. 109–251, §3, Aug. 1, 2006, 120 Stat. 654, provided that: ''This Act [enacting note below and amending Pub. L. 108–61 set out above] and the amendments 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.'']

[Proc. No. 8294, Sept. 26, 2008, 73 F.R. 57223, provided: in par. (2), that beginning on Sept. 27, 2008, importation of Burmese covered articles into the United States is prohibited, subject to certain exceptions; in par. (3), that beginning on Sept. 27, 2008, importation of non-Burmese covered articles into the United States is subject to certain conditions, with certain exceptions; 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) of Pub. L. 108–61, set out above, and also to redelegate 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 section 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 specified 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.]

[Certain powers of President under sections 3(a) and 4 of Pub. L. 108–61, set out above, delegated to Secretary of the Treasury and functions and authorities of President under section 3(b) of Pub. L. 108–61 delegated to Secretary of State by section 9 of Ex. Ord. No. 13310, July 28, 2003, 68 F.R. 44854, listed in a table below.]

Provisions similar to those contained in section 5(a) of Pub. L. 108–61, set out above, were contained in the following appropriation acts:

Pub. L. 111–117, div. F, title VII, §7071(b)(1), Dec. 16, 2009, 123 Stat. 3388.

Pub. L. 111–8, div. H, title VII, §7071(b)(1), Mar. 11, 2009, 123 Stat. 903.

Pub. L. 110–161, div. J, title VI, §638(b)(1), Dec. 26, 2007, 121 Stat. 2333.

Pub. L. 109–102, title V, §526(a), Nov. 14, 2005, 119 Stat. 2205.

Pub. L. 108–447, div. D, title V, §531(a), Dec. 8, 2004, 118 Stat. 3004.

Pub. L. 108–199, div. D, title V, §531(a), Jan. 23, 2004, 118 Stat. 180.

Pub. L. 111–42, title I, §102, July 28, 2009, 123 Stat. 1963, provided that:

''(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:

Pub. L. 110–287, §1, July 29, 2008, 122 Stat. 2649.

Pub. L. 110–52, §§1, 4, Aug. 1, 2007, 121 Stat. 264.

Pub. L. 109–251, §2, Aug. 1, 2006, 120 Stat. 654.

Pub. L. 109–39, July 27, 2005, 119 Stat. 409.

Pub. L. 108–272, July 7, 2004, 118 Stat. 818.

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. 2009–11, Jan. 15, 2009, 74 F.R. 3957, 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 110–286) (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 imposition 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.

GEORGE W. BUSH.

SUDAN PEACE

Pub. L. 108–497, Dec. 23, 2004, 118 Stat. 4012, as amended by Pub. L. 109–344, §§5(a), (b), 8(b), Oct. 13, 2006, 120 Stat. 1875, 1876, 1879, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Comprehensive Peace in Sudan Act of 2004'.

''SEC. 2. DEFINITIONS.

''In this Act:

''(1) 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.

''(2) GOVERNMENT OF SUDAN.—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 this Act [Dec. 23, 2004] (other than the coalition government agreed upon in the Nairobi Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004).

''(3) JEM.—The term 'JEM' means the Justice and Equality Movement.

''(4) SLA.—The term 'SLA' means the Sudan Liberation Army.

''(5) SPLM.—The term 'SPLM' means the Sudan People's Liberation Movement.

''SEC. 3. FINDINGS.

''Congress makes the following findings:

''(1) A comprehensive peace agreement for Sudan, as envisioned in the Sudan Peace Act [Pub. L. 107–245] (50 U.S.C. 1701 note) and the Machakos Protocol of 2002, could be in jeopardy if the parties do not implement and honor the agreements they have signed.

''(2) Since seizing power through a military coup in 1989, the Government of Sudan repeatedly has attacked and dislocated civilian populations in southern Sudan in a coordinated policy of ethnic cleansing and genocide that has cost the lives of more than 2,000,000 people and displaced more than 4,000,000 people.

''(3) In response to two decades of civil conflict in Sudan, the United States has helped to establish an internationally supported peace process to promote a negotiated settlement to the war that has resulted in a framework peace agreement, the Nairobi Declaration on the Final Phase of Peace in the Sudan, signed on June 5, 2004.

''(4) At the same time that the Government of Sudan was negotiating for a comprehensive and all inclusive peace agreement, enumerated in the Nairobi Declaration on the Final Phase of Peace in the Sudan, it refused to engage in any meaningful discussion with regard to its ongoing campaign of ethnic cleansing and genocide in the Darfur region of western Sudan.

''(5) 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 Secretary of State Colin Powell and others, and through United Nations Security Council Resolution 1556 (July 30, 2004).

''(6) 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.

''(7) 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.

''(8) 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.

''(9) Reports further indicate the systematic rape of thousands of women and girls, the abduction of women and children, and 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.

''(10) Despite the threat of international action expressed through United Nations Security Council Resolutions 1556 (July 30, 2004) and 1564 (September 18, 2004), the Government of Sudan continues to obstruct and prevent efforts to reverse the catastrophic consequences that loom over the Darfur region.

''(11) 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.

''(12) 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.

''(13) 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.

''(14) 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.

''(15) 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.'.

''(16) 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.

''(17) 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 the United States has access 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 1564 (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 1564;

''(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:

''(I) 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 should not hold leadership positions in 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.

''SEC. 5. AMENDMENTS TO THE SUDAN PEACE ACT.

''[Amended Pub. L. 107–245, set out below.]

''SEC. 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 the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block the assets of appropriate senior officials of the Government of Sudan.

''(c) BLOCKING OF ASSETS AND RESTRICTION ON VISAS OF CERTAIN INDIVIDUALS IDENTIFIED BY THE PRESIDENT.—

''(1) BLOCKING OF ASSETS.—Beginning on the date that is 30 days after the date of the enactment of the Darfur Peace and Accountability Act of 2006 [Oct. 13, 2006], and in the interest of contributing to peace in Sudan, the President shall, consistent with the authorities granted under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block the assets of any individual who the President determines is complicit in, or responsible for, acts of genocide, war crimes, or crimes against humanity in Darfur, including the family members or any associates of such individual to whom assets or property of such individual was transferred on or after July 1, 2002.

''(2) RESTRICTION ON VISAS.—Beginning on the date that is 30 days after the date of the enactment of the Darfur Peace and Accountability Act of 2006, and in the interest of contributing to peace in Sudan, the President shall deny a visa and entry to any individual who the President determines to be complicit in, or responsible for, acts of genocide, war crimes, or crimes against humanity in Darfur, including the family members or any associates of such individual to whom assets or property of such individual was transferred on or after July 1, 2002.

''(d) WAIVER.—The President may waive the application of subsection (a) or (b) if the President determines and certifies to the appropriate congressional committees that such a waiver is in the national interest of the United States. The President may waive the application of paragraph (1) or (2) of subsection (c) with respect to any individual if the President determines that such a waiver is in the national interests of the United States and, before exercising the waiver, notifies the appropriate congressional committees of the name of the individual and the reasons for the waiver.

''(e) CONTINUATION OF RESTRICTIONS.—Restrictions against the Government of Sudan that were imposed pursuant to title III and sections 508, 512, and 527 of the Foreign Operations, Export Financing, and Related Programs Act, 2004 (division D of Public Law 108–199; 118 Stat. 143 [162, 169, 170, 177]), or any other similar 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 5(a)(1) of this Act).

''(f) 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).

''SEC. 7. ADDITIONAL AUTHORITIES.

''[Repealed. Pub. L. 109–344, §8(b), Oct. 13, 2006, 120 Stat. 1879.]

''SEC. 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.]

Pub. L. 107–245, Oct. 21, 2002, 116 Stat. 1504, as amended by Pub. L. 108–497, §5, Dec. 23, 2004, 118 Stat. 4016; Pub. L. 109–344, §9, Oct. 13, 2006, 120 Stat. 1880, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Sudan Peace Act'.

''SEC. 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 has 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 postwar 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.

''(10) The acts of the Government of Sudan, including the acts described in this section, constitute genocide as defined by the Convention on the Prevention and Punishment of the Crime of Genocide (78 U.N.T.S. 277).

''(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 regard to both the prosecution of the war and the denial of basic human and political rights to all Sudanese;

''(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 'murahalliin' 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 systematic 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 20, 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.

''(B) If, under subparagraph (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).

''(C) If, under paragraph (A) the President determines and certifies in writing to the appropriate congressional committees that the Sudan People's Liberation Movement has not engaged in good faith negotiations to achieve a permanent, just, and equitable peace agreement, then paragraph (2) shall not apply to the Government of Sudan.

''(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 certification under subparagraph (B), the President makes 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

''(D) shall seek a United Nations Security Council Resolution to impose an arms embargo on the Government of Sudan.

''(c) REPORT ON 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.

''(d) REPORT ON UNITED STATES OPPOSITION TO FINANCING BY INTERNATIONAL FINANCIAL INSTITUTIONS.—The Secretary of the Treasury shall submit a semiannual 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.

''(e) 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 Development Association, the International Monetary Fund, the African Development Bank, and the African Development Fund.

''SEC. 7. MULTILATERAL PRESSURE ON COMBATANTS.

''It is the sense of Congress that—

''(1) the United Nations should help facilitate peace and recovery in Sudan;

''(2) the President, acting through the United States Permanent Representative to the United Nations, should seek to end the veto power of the Government of Sudan over the plans by OLS for air transport relief flights and, by doing so, to end the manipulation of the delivery of relief supplies to the advantage of the Government of Sudan on the battlefield; and

''(3) the President should take appropriate measures, including the implementation of recommendations of the International Eminent Persons Commission contained in the report issued on May 22, 2002, to end slavery and aerial bombardment of civilians by the Government of Sudan.

''SEC. 8. REPORTING REQUIREMENTS.

''(a) REPORT ON COMMERCIAL ACTIVITY.—Not later than 30 days after the date of the enactment of the

Comprehensive Peace in Sudan Act of 2004 [Dec. 23, 2004], and annually thereafter until the completion of the interim period outlined in the Machakos Protocol of 2002, the Secretary of State, in consultation with relevant United States Government departments and agencies, shall submit to the appropriate congressional committees a report regarding commercial activity in Sudan that includes—

''(1) a description of the sources and current status of Sudan's financing and construction of infrastructure and pipelines for oil exploitation, the effects of such financing and construction on the inhabitants of the regions in which the oil fields are located and the ability of the Government of Sudan to finance the war in Sudan with the proceeds of the oil exploitation;

''(2) a description of the extent to which that financing was secured in the United States or with the involvement of United States citizens; and

''(3) a description of the relationships between Sudan's arms industry and major foreign business enterprises and their subsidiaries, including government-controlled entities.

''(b) REPORT ON THE CONFLICT IN SUDAN, INCLUDING THE DARFUR REGION.—Not later than 30 days after the date of the enactment of the Comprehensive Peace in Sudan Act of 2004 [Dec. 23, 2004], and annually thereafter until the completion of the interim period outlined in the Machakos Protocol of 2002, the Secretary of State shall prepare and submit to the appropriate congressional committees a report regarding the conflict in Sudan, including the conflict in the Darfur region. Such report shall include—

''(1) the best estimates of the extent of aerial bombardment of civilian centers in Sudan by the Government of Sudan, including targets, frequency, and best estimates of damage; and

''(2) a description of the extent to which humanitarian relief in Sudan has been obstructed or manipulated by the Government of Sudan or other forces, and a contingency plan to distribute assistance should the Government of Sudan continue to obstruct or delay the international humanitarian response to the crisis in Darfur.

''(c) REPORT ON AFRICAN UNION MISSION IN SUDAN.—Until such time as AMIS concludes its mission in Darfur, in conjunction with the other reports required 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—

''(1) 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

''(2) 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—

''(1) a description of each sanction imposed under such provision of law;

''(2) the name of the individual or entity subject to the sanction, if applicable; and

''(3) 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—

''(1) a detailed annex on any military assistance provided in the period covered by this report;

''(2) the results of any review or other monitoring conducted by the Federal Government with respect to assistance provided under that Act; and

''(3) any unauthorized retransfer or use of military assistance furnished by the United States.

''(g)[sic] 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 up to 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.—Notwithstanding any other provision of law, the President is authorized to provide assistance for Sudan as authorized in paragraph (5) of this section—

''(A) subject to 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'S COMPLIANCE WITH A PEACE AGREEMENT.—If the President determines 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 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 2004, Dec. 23, 2004] (other than the coalition government agreed upon in the Nairobi 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 6(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:

Determination of President of the United States, No. 2004–29, Apr. 21, 2004, 69 F.R. 24905.

Determination of President of the United States, No. 2004–05, Oct. 21, 2003, 68 F.R. 63977.

Determination of President of the United States, No. 2003–21, Apr. 21, 2003, 68 F.R. 20329.

ASSISTANCE EFFORTS IN SUDAN

Pub. L. 108–199, div. D, title V, § 534(j), Jan. 23, 2004, 118 Stat. 182, defined terms for purposes of section 501 of Pub. L. 106–570, formerly set out below.

Pub. L. 106–570, title V, § 501, Dec. 27, 2000, 114 Stat. 3050, 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. 13067, prior to repeal by Pub. L. 109–344, § 8(a), Oct. 13, 2006, 120 Stat. 1879.

IRAN, NORTH KOREA, AND SYRIA NONPROLIFERATION

Pub. L. 106–178, Mar. 14, 2000, 114 Stat. 38, as amended by Pub. L. 107–228, div. B, title XIII, § 1306, Sept. 30, 2002, 116 Stat. 1438; Pub. L. 109–112, §§ 3–4(e)(1), Nov. 22, 2005, 119 Stat. 2368, 2369; Pub. L. 109–353, § 3, Oct. 13, 2006, 120 Stat. 2015; Pub. L. 110–329, div. A, § 125, Sept. 30, 2008, 122 Stat. 3577, provided that:

''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; or

''(E) the Wassenaar Arrangement list of Dual Use Goods and Technologies and Munitions list of July 12, 1996, and subsequent revisions; or

''(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) shall contain, 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. 12938 PROHIBITIONS.—The measures set forth in subsections (b) and (c) of section 4 of Executive Order No. 12938.

''(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);

''(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.—Any notification submitted by the President under subsection (a) shall include a written justification describing in detail the facts and circumstances relating specifically to the foreign person identified in a report submitted pursuant to section 2(a) that support the President's decision not to exercise the authority of section 3(a) with respect to that person.

''(c) SUBMISSION 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 section 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 to oppose the proliferation to or from Iran, North Korea, and Syria of weapons of mass destruction and missile systems capable of delivering such weapons;

''(2) 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 missile systems; and

''(3) 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 Foreign Relations 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 Interim Control Module and the Androgynous Peripheral 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.

''(3) This subsection shall cease to be effective 60 days after a United States propulsion module is in place at the International Space Station.

''(h) 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.

''(i) 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, as 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. 2405(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) EXTRAORDINARY 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 term does 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 thereto.

''(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;

''(C) any foreign government, 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 any 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 12, 1998;

''(iii) was or is transferred to the Russian Aviation and Space Agency or Russian Space Agency by decree of the Russian Government at any other time before, on, or after the date of the enactment of this Act [Mar. 14, 2000]; or

''(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; or

''(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.''

[Pub. L. 109–112, §4(e)(2), Nov. 22, 2005, 119 Stat. 2370, provided that: ''Any reference in a law, regulation, document, or other record of the United States to the Iran Nonproliferation Act of 2000 [now Iran, North Korea, and Syria Nonproliferation Act, Pub. L. 106–198, set out above] shall be deemed to be a reference to the Iran and Syria Nonproliferation Act.'']

[Memorandum of President of the United States, Sept. 11, 2000, 65 F.R. 56209, delegated to the Secretary of State functions and authorities conferred on the President under Pub. L. 106–178, set out above, with the exception of section 6(f) and (g), from which were delegated to the Secretary of State only section 6(f)(2)(A) and (g)(1)(B), with the remaining functions and authorities under section 6(f) and (g) delegated to the Administrator of the National Aeronautics and Space Administration, and provided that authorities and functions delegated by the memorandum could be redelegated.]

APPLICATION OF AUTHORITIES UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT TO COMMUNIST CHINESE MILITARY COMPANIES

Pub. L. 105–261, div. A, title XII, §1237, Oct. 17, 1998, 112 Stat. 2160, as amended by Pub. L. 106–398, §1 [[div. A], title XII, §1233], Oct. 30, 2000, 114 Stat. 1654, 1654A–330; Pub. L. 108–375, div. A, title XII, §1222, Oct. 28, 2004, 118 Stat. 2089, provided that:

''(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).

''(2) PENALTIES.—The penalties set forth in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) apply to violations of any license, order, or regulation issued under paragraph (1).

''(3) IEEPA AUTHORITIES.—For purposes of paragraph (1), the term 'IEEPA authorities' means the authorities 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 House of Representatives.

''(B) The Committee on Armed Services of the Senate.

''(C) The Secretary of State.

''(D) The Secretary of the Treasury.

''(E) The Attorney General.

''(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–1921–57–95, dated October 1995, 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 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of this title.]

IRAN SANCTIONS

Pub. L. 104–172, Aug. 5, 1996, 110 Stat. 1541, as amended by Pub. L. 107–24, §§2(a), 3–5, Aug. 3, 2001, 115 Stat. 199, 200; Pub. L. 109–267, §1, Aug. 4, 2006, 120 Stat. 680; Pub. L. 109–293, title II, §§201–202(b), 203–205(g)(1), Sept. 30, 2006, 120 Stat. 1345–1347, provided that:

''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 to further 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 the 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 (in addition to that provided in subsection (d)) the President recommends that the United States take to further the objectives of section 3 with respect to Iran.

''(c) WAIVER.—

''(1) IN GENERAL.—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.

''(2) SUBSEQUENT RENEWAL OF WAIVER.—If the President determines that, in accordance with paragraph (1), such a waiver is appropriate, the President may, at the conclusion of the period of a waiver under paragraph (1), renew such waiver for subsequent periods of not more than six months each.

''(d) ENHANCED SANCTION.—

''(1) SANCTION.—With respect to nationals of countries except those with respect to which the President has exercised the waiver authority of subsection (c), at any time after the first report is required to be submitted under subsection (b), section 5(a) shall be applied by substituting '$20,000,000' for '$40,000,000' each place it appears, and by substituting '$5,000,000' for '$10,000,000'.

''(2) REPORT TO CONGRESS.—The President shall report to the appropriate congressional committees any country with respect to which paragraph (1) applies.

''(e) INTERIM 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.

''(f) INVESTIGATIONS.—

''(1) IN GENERAL.—The President should initiate an investigation into the possible imposition of sanctions under section 5(a) against a person upon receipt by the United States of credible information indicating that such person is engaged in investment activity in Iran as 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 should determine, pursuant to section 5(a), if a person has engaged in investment activity in Iran as described in such section and shall notify the appropriate congressional committees of the basis for any such determination.

''SEC. 5. IMPOSITION OF SANCTIONS.

''(a) SANCTIONS WITH RESPECT TO THE DEVELOPMENT OF PETROLEUM RESOURCES OF IRAN.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act [Aug. 5, 1996], made an investment of $40,000,000 or more (or any combination of investments of at least $10,000,000 each, which in the aggregate equals or exceeds $40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Iran's ability to develop petroleum resources of Iran.

''(b) MANDATORY SANCTIONS WITH RESPECT TO DEVELOPMENT OF WEAPONS OF MASS DESTRUCTION OR OTHER MILITARY CAPABILITIES.—The President shall impose two or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, on or after the date of the enactment of this Act [Aug. 5, 1996], 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—

''(1) acquire or develop chemical, biological, or nuclear weapons or related technologies; or

''(2) acquire or develop destabilizing numbers and types of advanced conventional weapons.

''(c) PERSONS AGAINST WHICH THE SANCTIONS ARE TO BE IMPOSED.—The sanctions described in subsections (a) and (b) shall be imposed on—

''(1) any person the President determines has carried out the activities described in subsection (a) or (b); and

''(2) any person the President determines—

''(A) is a successor entity to the person referred to in paragraph (1);

''(B) is a parent or subsidiary of the person referred to in paragraph (1) if that parent or subsidiary, with actual knowledge, engaged in the activities referred to in paragraph (1); or

''(C) is an affiliate of the person referred to in paragraph (1) if that affiliate, with actual knowledge, engaged in the activities referred to in paragraph (1) and if that affiliate is controlled in fact by the person referred to in paragraph (1).

For purposes of this Act, any person or entity described in this subsection shall be referred to as a 'sanctioned person'.

''(d) 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 have been 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.

''(e) 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.

''(f) EXCEPTIONS.—The President shall not be required to apply or maintain the sanctions under subsection (a) or (b)—

''(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;

''(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 articles or services are essential to the national security under defense coproduction agreements;

''(2) in the case of procurement, to eligible products, as defined in section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b)(1) of that Act (19 U.S.C. 2511(b)(1));

''(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;

''(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.

''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 give approval to the issuance of 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 goods or services.

''(3) LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS.—The United States Government may prohibit any United States financial institution 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 REPOSITORY OF GOVERNMENT FUNDS.—Such financial institution may not serve as agent of the United States Government or serve as 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.

''(6) ADDITIONAL SANCTIONS.—The President may impose sanctions, as appropriate, to restrict imports with respect to a sanctioned person, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 and following).

''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—

''(1) has ceased its efforts to design, develop, manufacture, or acquire—

''(A) a nuclear explosive device or related materials and technology;

''(B) chemical and biological weapons; and

''(C) ballistic missiles and ballistic missile launch technology;

''(2) 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

''(3) poses no significant threat to United States 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) 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 foreign person in the activities that resulted in the determination by the President under section 5(a) or 5(b) 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), the President shall submit to the appropriate congressional committees a report on the status of consultations with the appropriate foreign govern-

ment 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, 30 days or more after the President determines and so reports to the appropriate congressional committees that it is important 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 determination under section 5(a) or (b), 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 (b), as the case may be;

''(C) an estimate of the significance of the provision of the items described in section 5(a) or section 5(b) to Iran's ability to, respectively, develop its petroleum resources or its weapons of mass destruction or other military capabilities; and

''(D) a statement as to the response of the United States in the event that the person concerned engages in other activities that would be subject to section 5(a) or (b).

''(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 (b) 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 pressure 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.

''(b) REPORT ON EFFECTIVENESS OF ACTIONS UNDER THIS ACT.—Not earlier than 24 months, and not later than 30 months, 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.

''(c) OTHER REPORTS.—The President shall ensure the continued transmittal to the Congress of reports describing—

''(1) the nuclear and other military capabilities of Iran, as required by section 601(a) of the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3281(a)] and section 1607 of the National Defense Authorization Act for Fiscal Year 1993 [Pub. L. 102–484, set out below]; and

''(2) the support provided by Iran for acts of international terrorism, as part of the Department of State's annual report on international terrorism.

''SEC. 11. DETERMINATIONS NOT REVIEWABLE.

''A determination to impose sanctions under this Act shall not be reviewable in any court.

''SEC. 12. EXCLUSION OF CERTAIN ACTIVITIES.

''Nothing in this Act shall apply to any activities subject to the reporting requirements of title V of the National Security Act of 1947 [50 U.S.C. 413 et seq.].

''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, 2011.

''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 Banking and Financial Services [now Committee on Financial Services], and the Committee on International Relations [now 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. 2410a(e)(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. 2410a(e)(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 nongovernmental 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 16 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 nongovernmental 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.

The term 'investment' does not include the entry into, performance, or financing of a contract to sell or purchase goods, services, or technology. 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.

''(10) IRAN.—The term 'Iran' includes any agency or instrumentality of Iran.

''(11) 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) 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).

''(13) PERSON.—The term 'person' means—

''(A) a natural person;

''(B) a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

''(C) any successor to any entity described in subparagraph (B).

''(14) PETROLEUM RESOURCES.—The term 'petroleum resources' includes petroleum and natural gas resources.

''(15) 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.

''(16) 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. 109–293, title II, §202(c), Sept. 30, 2006, 120 Stat. 1346, provided that: ''The amendments made by this section [amending section 5 of Pub. L. 104–172, set out above] shall apply with respect to actions taken on or after June 6, 2006.'']

[Pub. L. 109–293, title II, §205(g)(2), 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 'Iran Sanctions Act of 1996' [Pub. L. 104–172, set out above].'']

[Pub. L. 107–24, §2(b), Aug. 3, 2001, 115 Stat. 199, provided 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.'']

[Memorandum of President of the United States, Nov. 21, 1996, 61 F.R. 64249, 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 Federal Reserve Board and other interested agencies as appropriate functions vested in the President by sections 4(c), 5(a), (b), (c), (f), 6(1), (2), and 9(c) of Pub. L. 104–172, set out above, delegated to the Secretary of State functions vested in the President by sections 4(a), (b), (d), (e), 5(d), (e), 9(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 provision of law that is the same or substantially the same as such provisions, and provided that only the functions vested in the President by sections 4(a), (b), (d), (e), 5(d), (e), 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 has fulfilled the requirements of United Nations Security Council Resolution 731, adopted January 21, 1992, United Nations Security Council Resolution 748, adopted March 31, 1992, and United Nations Security Council Resolution 883, adopted November 11, 1993.

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 should 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 should instruct the United States Representative to the United Nations to vote against any resolution in the United Nations Security Council to admit Serbia to the United Nations or any organization affiliated with the United Nations, to veto any resolution to allow Serbia to assume the United Nations' membership of the former Socialist Federal Republic of Yugoslavia, and to take action to prevent Serbia from assuming the seat formerly occupied by the Socialist Federal Republic of Yugoslavia.

''(4) The Secretary of State should instruct the United States Permanent Representative on the Council of the North Atlantic Treaty Organization to oppose the extension of the Partnership for Peace program or any other organization affiliated with NATO to Serbia.

''(5) The Secretary of State should instruct the United States Representatives to the Southeast European Cooperative Initiative (SECI) to oppose and to work to prevent the extension of SECI membership to Serbia.

''(c) CERTIFICATION.—A certification described in this subsection is a certification that—

''(1) the representatives of the successor states to the Socialist Federal Republic of Yugoslavia have successfully negotiated the division of assets and liabilities and all other succession issues following the dissolution of the Socialist Federal Republic of Yugoslavia;

''(2) the Government of Serbia is fully complying with its obligations as a signatory to the General Framework Agreement for Peace in Bosnia and Herzegovina;

''(3) the Government of Serbia is fully cooperating with and providing unrestricted access to the International Criminal Tribunal for the former Yugoslavia, including surrendering persons indicted for war crimes who are within the jurisdiction of the territory of Serbia, and with the investigations concerning the commission of war crimes and crimes against humanity in Kosova;

''(4) the Government of Serbia is implementing internal democratic reforms; and

''(5) Serbian federal governmental officials, and representatives of the ethnic Albanian community in Kosova have agreed on, signed, and begun implementation of a negotiated settlement on the future status of Kosova.

''(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] in 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 Kosova.

''(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.

''(g) 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.''

Pub. L. 105–277, div. A, §101(d) [title V, §539], Oct. 21, 1998, 112 Stat. 2681–150, 2681–182, 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 Kosova;

''(2) international human rights observers are allowed to return to Kosova;

''(3) Serbian, Serbian-Montenegrin federal government officials, and representatives of the ethnic Albanian community in Kosova have agreed on and begun implementation of a negotiated settlement on the future status of Kosova; 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-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 subsections (a) and (b) if he certifies in writing to the Congress that the waiver is necessary to meet emergency humanitarian needs or to advance negotiations toward a peaceful settlement of the conflict in Kosova that is acceptable to the parties.

''(e) EXEMPTION FOR MONTENEGRO.—This section shall not apply to Montenegro.''

[For delegation of functions of President under section 101(d) [title V, §539] of div. A of Pub. L. 105–277, set out above, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of Title 22, Foreign Relations and Intercourse.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, §101(c) [title V, §540], Sept. 30, 1996, 110 Stat. 3009–121, 3009–155.

Pub. L. 104–107, title V, §540A(a)–(c), Feb. 12, 1996, 110 Stat. 737.

Pub. L. 103–160, div. A, title XV, §1511, Nov. 30, 1993, 107 Stat. 1839, provided that:

''(a) CODIFICATION OF EXECUTIVE BRANCH SANCTIONS.—The sanctions imposed on Serbia and Montenegro, as in effect on the date of the enactment of this Act [Nov. 30, 1993], that were imposed by or pursuant to the following directives of the executive branch shall (except as provided under subsections (d) and (e)) remain in effect until changed by law:

''(1) Executive Order 12808 of May 30, 1992 [listed in a table below], as continued in effect on May 25, 1993.

''(2) Executive Order 12810 of June 5, 1992 [listed in a table below].

''(3) Executive Order 12831 of January 15, 1993 [listed in a table below].

''(4) Executive Order 12846 of April 25, 1993 [listed in a table below].

''(5) Department of State Public Notice 1427, effective July 11, 1991.

''(6) Proclamation 6389 of December 5, 1991 (56 Fed. Register 64467).

''(7) Department of Transportation Order 92–5–38 of May 20, 1992.

''(8) Federal Aviation Administration action of June 19, 1992 (14 C.F.R. Part 91).

''(b) PROHIBITION ON ASSISTANCE.—No funds appropriated or otherwise made available by law may be obligated or expended on behalf of the government of Serbia or the government of Montenegro.

''(c) INTERNATIONAL FINANCIAL INSTITUTIONS.—The 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, except for basic human needs.

''(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 refugee care and human rights observation).

''(e) WAIVER AUTHORITY.—(1) The President may waive or modify the application, in whole or in part, of any sanction described in subsection (a), the prohibition in subsection (b), or the requirement in subsection (c).

''(2) Such a waiver or modification may only be effective upon certification by the President to Congress that the President has determined that the waiver or modification is necessary (A) to meet emergency humanitarian needs, or (B) to achieve a negotiated settlement of the conflict in Bosnia-Herzegovina that is acceptable to the parties.''

PRESIDENTIAL CERTIFICATIONS TO SUSPEND SANCTIONS IMPOSED ON THE GOVERNMENT OF SERBIA AND THE GOVERNMENT OF MONTENEGRO

Provisions suspending sanctions imposed on the governments of Serbia and Montenegro pursuant to section 1511 of Pub. L. 103–160, set out above, were contained in the following:

Determination of President of the United States, No. 01–7, Dec. 19, 2000, 66 F.R. 1013.

Determination of President of the United States, No. 99–14, Feb. 16, 1999, 64 F.R. 9263.

Determination of President of the United States, No. 97–26, May 30, 1997, 62 F.R. 32015.

Determination of the President of the United States, No. 96–7, Dec. 27, 1995, 61 F.R. 2887.

IRAN-IRAQ ARMS NON-PROLIFERATION

Pub. L. 102–484, div. A, title XVI, Oct. 23, 1992, 106 Stat. 2571, as amended by Pub. L. 104–106, div. A, title XIV, §1408(a)–(c), Feb. 10, 1996, 110 Stat. 494; Pub. L. 107–228, div. B, title XIII, §1308(g)(1)(C), Sept. 30, 2002, 116 Stat. 1441, provided that:

''SEC. 1601. SHORT TITLE.

''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. 3201 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.

''(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 sanctions against Iraq specified in paragraphs (1) through (4) of section 586G(a) of the Iraq Sanctions Act of 1990 (as contained in Public Law 101–513) [set out below], including denial of export licenses for United States persons and prohibitions on United States Government sales, shall be applied to the same extent and in the same manner with respect to Iran.

''SEC. 1604. SANCTIONS AGAINST CERTAIN PERSONS.

''(a) PROHIBITION.—If any person 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. 1605. SANCTIONS AGAINST CERTAIN FOREIGN COUNTRIES.

''(a) PROHIBITION.—If the President determines that the government of any foreign country transfers or re-

transfers 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—

''(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).

''(b) 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 coproduction of any item on the United States Munitions List (established under section 38 of the Arms Export Control Act [22 U.S.C. 2778]), 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 Iran, or a sanction described in section 1604(b) or 1605(b), 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.

''[(a) Repealed. Pub. L. 107–228, div. B, title XIII, § 1308(g)(1)(C), Sept. 30, 2002, 116 Stat. 1441.]

''(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 'goods or 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 officials 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 to satisfy obligations owed to United States Government and United States nationals for which Iraq had suspended repayment, was repealed by Pub. L. 102–27, title IV, § 402(a), Apr. 10, 1991, 105 Stat. 155, as amended by Pub. L. 102–136, § 126, Oct. 25, 1991, 105 Stat. 643, effective Nov. 5, 1990.

IRAQ SANCTIONS

Pub. L. 101–513, title V, §§ 586–586J, Nov. 5, 1990, 104 Stat. 2047–2054, provided that:

''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; and

''(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 current 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 12724 and 12725 [listed in a table below] (August 9, 1990) and, to the extent they are still in effect, Executive Orders Numbered 12722 and 12723 [listed in a table below] (August 2, 1990). Notwithstanding any other provision of law, no funds, credits, guarantees, or insurance appropriated or otherwise made available by this or any other Act for fiscal year 1991 or any fiscal year thereafter shall be used to support or administer any financial or commercial operation of any United States Government department, agency, or other entity, or of any person subject to the jurisdiction of the United States, for the benefit of the Government of Iraq, its agencies or instrumentalities, or any person working on behalf of the Government of Iraq, contrary to the trade embargo and other economic sanctions imposed in accordance with this section.

''(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 666 (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.

''(2) NATIONAL EMERGENCIES AND UNITED NATIONS LEGISLATION.—Nothing in this section supersedes any provision of the National Emergencies Act [50 U.S.C. 1601 et seq.] or any authority of the President under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.] or section 5(a) of the United Nations Participation Act of 1945 [22 U.S.C. 287c(a)].

''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. 2191 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 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 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.

''Notwithstanding section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) and section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b))—

''(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 vio-

late or evade Executive Order Numbered 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive order—

''(A) shall, upon conviction, be fined not more than $1,000,000, if a person other than a natural person; or

''(B) if a natural person, shall, upon conviction, be fined not more than $1,000,000, be imprisoned for not more than 12 years, or both.

Any officer, director, or agent of any corporation who knowingly participates in a violation, evasion, or attempt described in paragraph (2) may be punished by imposition of the fine or imprisonment (or both) specified in subparagraph (B) of that paragraph.

''SEC. 586F. DECLARATIONS REGARDING IRAQ'S LONG-STANDING VIOLATIONS OF INTERNATIONAL LAW.

''(a) IRAQ'S VIOLATIONS OF INTERNATIONAL LAW.—The Congress determines that—

''(1) the Government of Iraq has demonstrated repeated 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 (done at Geneva, June 17, 1925), as well as other international treaties;

''(2) the Government of Iraq is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights and is obligated under the Covenants, 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 continuing human rights abuses by the Government of Iraq, including summary executions, mass political killings, disappearances, widespread use of torture, arbitrary arrests and prolonged detention without trial of thousands of political opponents, forced relocation and deportation, denial of nearly all civil and political 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 intensified its severe repression of the Kurdish minority of Iraq, deliberately destroyed more than 3,000 villages and towns in the Kurdish regions, and forcibly expelled more than 500,000 people, thus effectively depopulating 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 citizens, 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 threatened to use chemical weapons against other nations;

''(9) persuasive evidence exists that Iraq is developing biological weapons in violation of international law;

''(10) there are strong indications that Iraq has taken steps to produce nuclear weapons and has attempted to smuggle from the United States, in violation of United States law, components for triggering devices used in nuclear warheads whose manufacture would contravene the Treaty on the Non-Proliferation of Nuclear Weapons, to which Iraq is a party; and

''(11) Iraqi President Saddam Hussein has threatened to use terrorism against other nations in violation of international law and has increased Iraq's support for the Palestine Liberation Organization and other Palestinian groups that have conducted terrorist acts.

''(b) HUMAN RIGHTS VIOLATIONS.—The Congress determines that the Government of Iraq is engaged in a consistent pattern of gross violations of internationally recognized human rights. All provisions of law that impose 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 grants sanctuary from prosecution to individuals or groups which have committed an act of international terrorism, and a country which otherwise supports international terrorism. The provisions of law specified in paragraph (2) and all other provisions of law that impose sanctions against a country which has repeatedly provided support for acts of international terrorism, which grants sanctuary from prosecution to an individual or group which has committed an act of international terrorism, or which otherwise supports international terrorism shall be fully enforced against Iraq.

''(2) The provisions of law referred to in paragraph (1) are—

''(A) section 40 of the Arms Export Control Act [22 U.S.C. 2780];

''(B) section 620A of the Foreign Assistance Act of 1961 [22 U.S.C. 2371];

''(C) sections 555 and 556 of this Act [104 Stat. 2021, 2022] (and the corresponding sections of predecessor foreign operations appropriations Acts); and

''(D) section 555 of the International Security and Development Cooperation Act of 1985 [99 Stat. 227].

''(d) MULTILATERAL COOPERATION.—The Congress calls on the President to seek multilateral cooperation—

''(1) to deny dangerous technologies to Iraq;

''(2) to induce Iraq to respect internationally recognized human rights; and

''(3) to induce Iraq to allow appropriate international humanitarian and human rights organizations to have access to Iraq and Kuwait, including the areas in northern Iraq traditionally inhabited by Kurds.

''SEC. 586G. SANCTIONS AGAINST IRAQ.

''(a) IMPOSITION.—Except as provided in section 586H, 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. 2751 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 Administration Act of 1979 (50 U.S.C. App. 2405) shall be used to prohibit the export to Iraq of any goods or technology listed pursuant to that section or section 5(c)(1) of that Act (50 U.S.C. App. 2404(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 TECHNOLOGY.—

''(A) NRC LICENSES.—The Nuclear Regulatory Commission shall not issue any license or other authorization 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 production or utilization facility, any sensitive nuclear technology, any component, item, or substance determined to have significance for nuclear explosive purposes pursuant to section 109b. 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 material, source material, or byproduct material to Iraq.

''(C) DOE AUTHORIZATIONS.—The Secretary of Energy shall not provide a specific authorization under section 57b.(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. 262d).

''(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. 2151 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 IRAQI POLICIES AND ACTIONS.—The authority of subsection (a) may be exercised 60 days after the President certifies to the Congress that—

''(1) the Government of Iraq—

''(A) has demonstrated, through a pattern of conduct, substantial improvement in its respect for internationally recognized human rights;

''(B) is not acquiring, developing, or manufacturing (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; and

''(C) does not provide support for international terrorism;

''(2) the Government of Iraq is in substantial compliance with its obligations under international law, including—

''(A) the Charter of the United Nations;

''(B) the International Covenant on Civil and Political Rights (done at New York, December 16, 1966) and the International Covenant on Economic, Social, and Cultural Rights (done at New York, December 16, 1966);

''(C) the Convention on the Prevention and Punishment of the Crime of Genocide (done at Paris, December 9, 1948);

''(D) the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (done at Geneva, June 17, 1925);

''(E) the Treaty on the Non-Proliferation of Nuclear Weapons (done at Washington, London, and Moscow, July 1, 1968); and

''(F) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (done at Washington, London, and Moscow, April 10, 1972); and

''(3) the President has determined that it is essential to the national interests of the United States to exercise the authority of subsection (a).

''(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 coproduction 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 arms transfer activities pose to United States allies in the Middle East, and the extension of Iraq's political-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 every 6 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. 108–7, div. E, title V, § 531, Feb. 20, 2003, 117 Stat. 192.

[Pub. L. 107–115, title V, § 531, Jan. 10, 2002, 115 Stat. 2150.

[Pub. L. 106–429, § 101(a) [title V, § 534], Nov. 6, 2000, 114 Stat. 1900, 1900A–34.

[Pub. L. 106–113, div. B, § 1000(a)(2) [title V, § 534], Nov. 29, 1999, 113 Stat. 1535, 1501A–93.

[Pub. L. 105–277, div. A, § 101(d) [title V, § 535], Oct. 21, 1998, 112 Stat. 2681–150, 2681–181.

[Pub. L. 105–118, title V, § 534, Nov. 26, 1997, 111 Stat. 2416.

[Pub. L. 104–208, div. A, title I, § 101(c) [title V, § 533], Sept. 30, 1996, 110 Stat. 3009–121, 3009–152.

[Pub. L. 104–107, title V, § 534, Feb. 12, 1996, 110 Stat. 734.

[Pub. L. 103–306, title V, § 538, Aug. 23, 1994, 108 Stat. 1639.

[Pub. L. 103–87, title V, § 539, Sept. 30, 1993, 107 Stat. 957.

[Pub. L. 102–391, title V, § 573, Oct. 6, 1992, 106 Stat. 1683.]

Pub. L. 101–510, div. A, title XIV, § 1458, Nov. 5, 1990, 104 Stat. 1697, 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 DELEGATING 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. 26459, provided:

Memorandum for the Secretary of State [and] the Secretary of Commerce

By virtue of the authority vested in me by the Constitution and the laws of the United States, including sections 1503 and 1504 of the Emergency Wartime Supplemental Act, 2003 [Emergency Wartime Supplemental Appropriations Act, 2003], Public Law 108–11 (the ''Act'') [117 Stat. 579], and section 301 of title 3, United States Code, I hereby:

(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 87–195, as amended [22 U.S.C. 2371] (the ''FAA''), 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, 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 en 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)

Ex. Ord. No. 13129, July 4, 1999, 64 F.R. 36759, revoked by Ex. Ord. No. 13268, July 2, 2002, 67 F.R. 44751.

Continuations of national emergency declared by Ex. Ord. No. 13129 were contained in the following:
Notice of President of the United States, dated June 30, 2001, 66 F.R. 35363.
Notice of President of the United States, dated June 30, 2000, 65 F.R. 41549.

Ex. Ord. No. 13268, July 2, 2002, 67 F.R. 44751.

ANGOLA (UNITA)

Ex. Ord. No. 12865, Sept. 26, 1993, 58 F.R. 51005, revoked by Ex. Ord. No. 13298, May 6, 2003, 68 F.R. 24857.

Continuations of national emergency declared by Ex. Ord. No. 12865 were contained in the following:
Notice of President of the United States, dated Sept. 23, 2002, 67 F.R. 60105.
Notice of President of the United States, dated Sept. 24, 2001, 66 F.R. 49084.
Notice of President of the United States, dated Sept. 22, 2000, 65 F.R. 57721.
Notice of President of the United States, dated Sept. 21, 1999, 64 F.R. 51419.
Notice of President of the United States, dated Sept. 23, 1998, 63 F.R. 51509.
Notice of President of the United States, dated Sept. 24, 1997, 62 F.R. 50477.
Notice of President of the United States, dated Sept. 16, 1996, 61 F.R. 49047.
Notice of President of the United States, dated Sept. 18, 1995, 60 F.R. 48621.
Notice of President of the United States, dated Aug. 17, 1994, 59 F.R. 42749.

Ex. Ord. No. 13069, Dec. 12, 1997, 62 F.R. 65989, revoked by Ex. Ord. No. 13298, May 6, 2003, 68 F.R. 24857.
Ex. Ord. No. 13098, Aug. 18, 1998, 63 F.R. 44771, revoked by Ex. Ord. No. 13298, May 6, 2003, 68 F.R. 24857.
Ex. Ord. No. 13298, May 6, 2003, 68 F.R. 24857.

BELARUS

Ex. Ord. No. 13405, June 16, 2006, 71 F.R. 35485.

Continuations of national emergency declared by Ex. Ord. No. 13405 were contained in the following:
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. 33381.

BURMA

Ex. Ord. No. 13047, May 20, 1997, 62 F.R. 28301, sections 1 to 7 of which were revoked by Ex. Ord. No. 13310, §12, July 28, 2003, 68 F.R. 44855, to the extent inconsistent with Ex. Ord. No. 13310.

Continuations of national emergency declared by Ex. Ord. No. 13047 were contained in the following:
Notice of President of the United States, dated May 14, 2009, 74 F.R. 23287.
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. 28447.
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 17, 2004, 69 F.R. 29041.
Notice of President of the United States, dated May 16, 2003, 68 F.R. 27425.
Notice of President of the United States, dated May 16, 2002, 67 F.R. 35423.
Notice of President of the United States, dated May 15, 2001, 66 F.R. 27443.
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.
Notice of President of the United States, dated May 18, 1998, 63 F.R. 27661.

Ex. Ord. No. 13310, July 28, 2003, 68 F.R. 44853.
Ex. Ord. No. 13448, Oct. 18, 2007, 72 F.R. 60223.
Ex. Ord. No. 13464, Apr. 30, 2008, 73 F.R. 24491.

COLOMBIA

Ex. Ord. No. 12978, Oct. 21, 1995, 60 F.R. 54579, as amended by Ex. Ord. No. 13286, §22, Feb. 28, 2003, 68 F.R. 10624.

Continuations of national emergency declared by Ex. Ord. No. 12978 were contained in the following:
Notice of President of the United States, dated Oct. 16, 2009, 74 F.R. 53879.
Notice of President of the United States, dated Oct. 16, 2008, 73 F.R. 62433.
Notice of President of the United States, dated Oct. 18, 2007, 72 F.R. 59473.
Notice of President of the United States, dated Oct. 19, 2006, 71 F.R. 62053.
Notice of President of the United States, dated Oct. 19, 2005, 70 F.R. 61209.
Notice of President of the United States, dated Oct. 19, 2004, 69 F.R. 61733.
Notice of President of the United States, dated Oct. 16, 2003, 68 F.R. 60023.
Notice of President of the United States, dated Oct. 16, 2002, 67 F.R. 64307.
Notice of President of the United States, dated Oct. 16, 2001, 66 F.R. 53073.
Notice of President of the United States, dated Oct. 19, 2000, 65 F.R. 63193.
Notice of President of the United States, dated Oct. 19, 1999, 64 F.R. 56667.
Notice of President of the United States, dated Oct. 19, 1998, 63 F.R. 56079.
Notice of President of the United States, dated Oct. 17, 1997, 62 F.R. 54561.
Notice of President of the United States, dated Oct. 16, 1996, 61 F.R. 54531.

CÔTE D'IVOIRE

Ex. Ord. No. 13396, Feb. 7, 2006, 71 F.R. 7389.

Continuations of national emergency declared by Ex. Ord. No. 13396 were contained in the following:
Notice of President of the United States, dated Feb. 4, 2009, 74 F.R. 6349.
Notice of President of the United States, dated Feb. 5, 2008, 73 F.R. 7185.
Notice of President of the United States, dated Feb. 5, 2007, 72 F.R. 5593.

COUNTRIES AND PERSONS COMMITTING OR SUPPORTING TERRORISM

Ex. Ord. No. 12947, Jan. 23, 1995, 60 F.R. 5079, as amended by Ex. Ord. No. 13099, §§1, 2, Aug. 20, 1998, 63 F.R. 45167; Ex. Ord. No. 13372, §2, Feb. 16, 2005, 70 F.R. 8499.

Continuations of national emergency declared by Ex. Ord. No. 12947 were contained in the following:
Notice of President of the United States, dated Jan. 15, 2009, 74 F.R. 3961.
Notice of President of the United States, dated Jan. 18, 2008, 73 F.R. 3859.
Notice of President of the United States, dated Jan. 18, 2007, 72 F.R. 2595.
Notice of President of the United States, dated Jan. 18, 2006, 71 F.R. 3407.
Notice of President of the United States, dated Jan. 17, 2005, 70 F.R. 3277.
Notice of President of the United States, dated Jan. 16, 2004, 69 F.R. 2991.
Notice of President of the United States, dated Jan. 20, 2003, 68 F.R. 3161.

Notice of President of the United States, dated Jan. 18, 2002, 67 F.R. 3033.
Notice of President of the United States, dated Jan. 19, 2001, 66 F.R. 7371.
Notice of President of the United States, dated Jan. 19, 2000, 65 F.R. 3581.
Notice of President of the United States, dated Jan. 20, 1999, 64 F.R. 3393.
Notice of President of the United States, dated Jan. 21, 1998, 63 F.R. 3445.
Notice of President of the United States, dated Jan. 21, 1997, 62 F.R. 3439.
Notice of President of the United States, dated Jan. 18, 1996, 61 F.R. 1695.

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. 44751; Ex. Ord. No. 13284, §4, Jan. 23, 2003, 68 F.R. 4075; Ex. Ord. No. 13372, §1, Feb. 16, 2005, 70 F.R. 8499.

Continuations of national emergency declared by Ex. Ord. No. 13224 were contained in the following:
Notice of President of the United States, dated Sept. 21, 2009, 74 F.R. 48359.
Notice of President of the United States, dated Sept. 18, 2008, 73 F.R. 54489.
Notice of President of the United States, dated Sept. 20, 2007, 72 F.R. 54205.
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 Sept. 21, 2004, 69 F.R. 56923.
Notice of President of the United States, dated Sept. 18, 2003, 68 F.R. 55189.
Notice of President of the United States, dated Sept. 19, 2002, 67 F.R. 59447.

Ex. Ord. No. 13372, Feb. 16, 2005, 70 F.R. 8499.

COUNTRIES AND PERSONS PROLIFERATING WEAPONS OF MASS DESTRUCTION

Ex. Ord. No. 12735, Nov. 16, 1990, 55 F.R. 48587, revoked by Ex. Ord. No. 12938, §10, Nov. 14, 1994, 59 F.R. 59099.

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. 14, 1991, 56 F.R. 58171.

Ex. Ord. No. 12868, Sept. 30, 1993, 58 F.R. 51749, revoked, with savings provision, by Ex. Ord. No. 12930, §3, Sept. 29, 1994, 59 F.R. 50475.
Ex. Ord. No. 12930, Sept. 29, 1994, 59 F.R. 50475, revoked by Ex. Ord. No. 12938, §10, Nov. 14, 1994, 59 F.R. 59099.
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. Ord. No. 13382, §4, June 28, 2005, 70 F.R. 38568.

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. 10, 2008, 73 F.R. 67097.
Notice of President of the United States, dated Nov. 8, 2007, 72 F.R. 63963.
Notice of President of the United States, dated Oct. 27, 2006, 71 F.R. 64109.
Notice of President of the United States, dated Oct. 25, 2005, 70 F.R. 62027.
Notice of President of the United States, dated Nov. 4, 2004, 69 F.R. 64637.
Notice of President of the United States, dated Oct. 29, 2003, 68 F.R. 62209.
Notice of President of the United States, dated Nov. 6, 2002, 67 F.R. 68493.
Notice of President of the United States, dated Nov. 9, 2001, 66 F.R. 56965.
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. 12, 1998, 63 F.R. 63589.
Notice of President of the United States, dated Nov. 12, 1997, 62 F.R. 60993.
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.

Ex. Ord. No. 13382, June 28, 2005, 70 F.R. 38567.

COUNTRIES AND PERSONS THREATENING UNITED STATES EXPORT REGULATION UPON EXPIRATION OF THE EXPORT ADMINISTRATION ACT OF 1979

Ex. Ord. No. 12444, Oct. 14, 1983, 48 F.R. 48215, revoked by Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563.
Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563.
Ex. Ord. No. 12470, Mar. 30, 1984, 49 F.R. 13099, revoked by Ex. Ord. No. 12525, July 12, 1985, 50 F.R. 28757.

Continuation of emergency declared by Ex. Ord. No. 12470 was contained in the following:
Notice of President of the United States, dated Mar. 28, 1985, 50 F.R. 12513.

Ex. Ord. No. 12525, July 12, 1985, 50 F.R. 28757.
Ex. Ord. No. 12730, Sept. 30, 1990, 55 F.R. 40373, revoked by Ex. Ord. No. 12867, §1, Sept. 30, 1993, 58 F.R. 51747.

Continuations of national emergency declared by Ex. Ord. No. 12730 were contained in the following:
Notice of President of the United States, dated Sept. 25, 1992, 57 F.R. 44649.
Notice of President of the United States, dated Sept. 26, 1991, 56 F.R. 49385.

Ex. Ord. No. 12867, Sept. 30, 1993, 58 F.R. 51747.
Ex. Ord. No. 12923, June 30, 1994, 59 F.R. 34551, revoked by Ex. Ord. No. 12924, §4, Aug. 19, 1994, 59 F.R. 43438.
Ex. Ord. No. 12924, Aug. 19, 1994, 59 F.R. 43437, revoked by Ex. Ord. No. 13206, §1, Apr. 4, 2001, 66 F.R. 18397.

Continuations of national emergency declared by Ex. Ord. No. 12924 were contained in the following:
Notice of President of the United States, dated Aug. 3, 2000, 65 F.R. 48347.
Notice of President of the United States, dated Aug. 10, 1999, 64 F.R. 44101.
Notice of President of the United States, dated Aug. 13, 1998, 63 F.R. 44121.
Notice of President of the United States, dated Aug. 13, 1997, 62 F.R. 43629.
Notice of President of the United States, dated Aug. 14, 1996, 61 F.R. 42527.
Notice of President of the United States, dated Aug. 15, 1995, 60 F.R. 42767.

Ex. Ord. No. 13206, Apr. 4, 2001, 66 F.R. 18397.
Ex. Ord. No. 13222, Aug. 17, 2001, 66 F.R. 44025.

Continuations of national emergency declared by Ex. Ord. No. 13222 were contained in the following:
Notice of President of the United States, dated Aug. 13, 2009, 74 F.R. 41325.
Notice of President of the United States, dated July 23, 2008, 73 F.R. 43603.
Notice of President of the United States, dated Aug. 15, 2007, 72 F.R. 46137.
Notice of President of the United States, dated Aug. 3, 2006, 71 F.R. 44551.
Notice of President of the United States, dated Aug. 2, 2005, 70 F.R. 45273.
Notice of President of the United States, dated Aug. 6, 2004, 69 F.R. 48763.
Notice of President of the United States, dated Aug. 7, 2003, 68 F.R. 47833.
Notice of President of the United States, dated Aug. 14, 2002, 67 F.R. 53721.

DEMOCRATIC REPUBLIC OF THE CONGO

Ex. Ord. No. 13413, Oct. 27, 2006, 71 F.R. 64105.

Continuations of national emergency declared by Ex. Ord. No. 13413 were contained in the following:

Notice of President of the United States, dated Oct. 20, 2009, 74 F.R. 54741.

Notice of President of the United States, dated Oct. 22, 2008, 73 F.R. 63619.

Notice of President of the United States, dated Oct. 24, 2007, 72 F.R. 61045.

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Ex. Ord. No. 12775, Oct. 4, 1991, 56 F.R. 50641, revoked by Ex. Ord. No. 12932, Oct. 14, 1994, 59 F.R. 52403.

Continuations of national emergency declared by Ex. Ord. No. 12775 were contained in the following:

Notice of President of the United States, dated Sept. 30, 1994, 59 F.R. 50479.

Notice of President of the United States, dated Sept. 30, 1993, 58 F.R. 51563.

Notice of President of the United States, dated Sept. 30, 1992, 57 F.R. 45557.

Ex. Ord. No. 12779, Oct. 28, 1991, 56 F.R. 55975, revoked by Ex. Ord. No. 12932, Oct. 14, 1994, 59 F.R. 52403.

Ex. Ord. No. 12853, June 30, 1993, 58 F.R. 35843, revoked by Ex. Ord. No. 12932, Oct. 14, 1994, 59 F.R. 52403.

Ex. Ord. No. 12872, Oct. 18, 1993, 58 F.R. 54029, revoked by Ex. Ord. No. 12932, Oct. 14, 1994, 59 F.R. 52403.

Ex. Ord. No. 12914, May 7, 1994, 59 F.R. 24339, revoked by Ex. Ord. No. 12932, Oct. 14, 1994, 59 F.R. 52403.

Ex. Ord. No. 12917, May 21, 1994, 59 F.R. 26925, revoked by Ex. Ord. No. 12932, Oct. 14, 1994, 59 F.R. 52403.

Ex. Ord. No. 12920, June 10, 1994, 59 F.R. 30501, revoked by Ex. Ord. No. 12932, Oct. 14, 1994, 59 F.R. 52403.

Ex. Ord. No. 12922, June 21, 1994, 59 F.R. 32645, revoked by Ex. Ord. No. 12932, Oct. 14, 1994, 59 F.R. 52403.

Ex. Ord. No. 12932, Oct. 14, 1994, 59 F.R. 52403.

IRAN

Ex. Ord. No. 12170, Nov. 14, 1979, 44 F.R. 65729.

Continuations of national emergency declared by Ex. Ord. No. 12170 were contained in the following:

Notice of President of the United States, dated Nov. 12, 2009, 74 F.R. 58841.

Notice of President of the United States, dated Nov. 10, 2008, 73 F.R. 67357.

Notice of President of the United States, dated Nov. 8, 2007, 72 F.R. 63965.

Notice of President of the United States, dated Nov. 9, 2006, 71 F.R. 66227.

Notice of President of the United States, dated Nov. 9, 2005, 70 F.R. 69039.

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. 64489.

Notice of President of the United States, dated Nov. 12, 2002, 67 F.R. 68929.

Notice of President of the United States, dated Nov. 9, 2001, 66 F.R. 56966.

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 Sept. 30, 1997, 62 F.R. 51591.

Notice of President of the United States, dated Oct. 29, 1996, 61 F.R. 56107.

Notice of President of the United States, dated Oct. 31, 1995, 60 F.R. 55651.

Notice of President of the United States, dated Oct. 31, 1994, 59 F.R. 54785.

Notice of President of the United States, dated Nov. 1, 1993, 58 F.R. 58639.

Notice of President of the United States, dated Oct. 25, 1992, 57 F.R. 48719.

Notice of President of the United States, dated Nov. 12, 1991, 56 F.R. 57791.

Notice of President of the United States, dated Nov. 9, 1990, 55 F.R. 47453.

Notice of President of the United States, dated Oct. 30, 1989, 54 F.R. 46043.

Notice of President of the United States, dated Nov. 8, 1988, 53 F.R. 45750.

Notice of President of the United States, dated Nov. 10, 1987, 52 F.R. 43549.

Notice of President of the United States, dated Nov. 10, 1986, 51 F.R. 41067.

Notice of President of the United States, dated Nov. 1, 1985, 50 F.R. 45901.

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.

Ex. Ord. No. 12205, Apr. 7, 1980, 45 F.R. 24099, as amended by Ex. Ord. No. 12211, Apr. 17, 1980, 45 F.R. 26685, of which provisions related to prohibitions contained therein were revoked by Ex. Ord. No. 12282, Jan. 19, 1981, 46 F.R. 7925.

Ex. Ord. No. 12211, Apr. 17, 1980, 45 F.R. 26685, of which provisions related to prohibitions contained therein were revoked by Ex. Ord. No. 12282, Jan. 19, 1981, 46 F.R. 7925.

Ex. Ord. No. 12276, Jan. 19, 1981, 46 F.R. 7913.

Ex. Ord. No. 12277, Jan. 19, 1981, 46 F.R. 7915.

Ex. Ord. No. 12278, Jan. 19, 1981, 46 F.R. 7917.

Ex. Ord. No. 12279, Jan. 19, 1981, 46 F.R. 7919.

Ex. Ord. No. 12280, Jan. 19, 1981, 46 F.R. 7921.

Ex. Ord. No. 12281, Jan. 19, 1981, 46 F.R. 7923.

Ex. Ord. No. 12282, Jan. 19, 1981, 46 F.R. 7925.

Ex. Ord. No. 12283, Jan. 19, 1981, 46 F.R. 7927.

Ex. Ord. No. 12284, Jan. 19, 1981, 46 F.R. 7929.

Ex. Ord. No. 12285, Jan. 19, 1981, 46 F.R. 7931, as amended by Ex. Ord. No. 12307, June 4, 1981, 46 F.R. 30483; Ex. Ord. No. 12317, Aug. 14, 1981, 46 F.R. 42241, revoked by Ex. Ord. No. 12379, §21, Aug. 17, 1982, 47 F.R. 36100, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Ex. Ord. No. 12294, Feb. 24, 1981, 46 F.R. 14111.

Ex. Ord. No. 12613, Oct. 29, 1987, 52 F.R. 41940, revoked by Ex. Ord. No. 13059, §7, Aug. 19, 1997, 62 F.R. 44533.

Ex. Ord. No. 12957, Mar. 15, 1995, 60 F.R. 14615, sections 1 and 2 of which were revoked by Ex. Ord. No. 12959, §5, May 6, 1995, 60 F.R. 24758, to the extent inconsistent with Ex. Ord. No. 12959.

Continuations of national emergency declared by Ex. Ord. No. 12957 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.

Notice of President of the United States, dated Mar. 8, 2007, 72 F.R. 10883.

Notice of President of the United States, dated Mar. 13, 2006, 71 F.R. 13241.

Notice of President of the United States, dated Mar. 10, 2005, 70 F.R. 12581.

Notice of President of the United States, dated Mar. 10, 2004, 69 F.R. 12051.

Notice of President of the United States, dated Mar. 12, 2003, 68 F.R. 12563.

Notice of President of the United States, dated Mar. 13, 2002, 67 F.R. 11553.

Notice of President of the United States, dated Mar. 13, 2001, 66 F.R. 15013.

Notice of President of the United States, dated Mar. 13, 2000, 65 F.R. 13863.

Notice of President of the United States, dated Mar. 10, 1999, 64 F.R. 12239.

Notice of President of the United States, dated Mar. 4, 1998, 63 F.R. 11099.

Notice of President of the United States, dated Mar. 5, 1997, 62 F.R. 10409.

Notice of President of the United States, dated Mar. 8, 1996, 61 F.R. 9897.

Ex. Ord. No. 12959, May 6, 1995, 60 F.R. 24757, as amended by Ex. Ord. No. 13059, §7, Aug. 19, 1997, 62 F.R. 44533.

Ex. Ord. No. 13059, Aug. 19, 1997, 62 F.R. 44531.

IRAQ

Ex. Ord. No. 12722, Aug. 2, 1990, 55 F.R. 31803, revoked by Ex. Ord. No. 12724, §6, Aug. 9, 1990, 55 F.R. 33090, to the extent inconsistent with Ex. Ord. No. 12724, and by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055.

Continuations of national emergency declared by Ex. Ord. No. 12722 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 30, 2002, 67 F.R. 50341.

Notice of President of the United States, dated July 31, 2001, 66 F.R. 40105.

Notice of President of the United States, dated July 28, 2000, 65 F.R. 47241.

Notice of President of the United States, dated July 20, 1999, 64 F.R. 39897.

Notice of President of the United States, dated July 28, 1998, 63 F.R. 41175.

Notice of President of the United States, dated July 31, 1997, 62 F.R. 41803.

Notice of President of the United States, dated July 22, 1996, 61 F.R. 38561.

Notice of President of the United States, dated July 28, 1995, 60 F.R. 39099.

Notice of President of the United States, dated July 19, 1994, 59 F.R. 37151.

Notice of President of the United States, dated July 20, 1993, 58 F.R. 39111.

Notice of President of the United States, dated July 21, 1992, 57 F.R. 32875.

Notice of President of the United States, dated July 26, 1991, 56 F.R. 35995.

Ex. Ord. No. 12724, Aug. 9, 1990, 55 F.R. 33089, revoked by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055.

Ex. Ord. No. 12817, Oct. 21, 1992, 57 F.R. 48433, revoked by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055.

Ex. Ord. No. 13303, May 22, 2003, 68 F.R. 31931, as amended by Ex. Ord. No. 13364, §1, Nov. 29, 2004, 69 F.R. 70177.

Continuations of national emergency declared by Ex. Ord. No. 13303 were contained in the following:

Notice of President of the United States, dated May 19, 2009, 74 F.R. 23935.

Notice of President of the United States, dated May 20, 2008, 73 F.R. 29683.

Notice of President of the United States, dated May 18, 2007, 72 F.R. 28581.

Notice of President of the United States, dated May 18, 2006, 71 F.R. 29237.

Notice of President of the United States, dated May 19, 2005, 70 F.R. 29435.

Notice of President of the United States, dated May 20, 2004, 69 F.R. 29409.

Ex. Ord. No. 13315, Aug. 28, 2003, 68 F.R. 52315, as amended by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055.

Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055.

Ex. Ord. No. 13364, Nov. 29, 2004, 69 F.R. 70177.

Ex. Ord. No. 13438, July 17, 2007, 72 F.R. 39719.

KUWAIT

Ex. Ord. No. 12723, Aug. 2, 1990, 55 F.R. 31805, revoked by Ex. Ord. No. 12771, July 25, 1991, 56 F.R. 35993.

Ex. Ord. No. 12725, Aug. 9, 1990, 55 F.R. 33091, revoked by Ex. Ord. No. 12771, July 25, 1991, 56 F.R. 35993.

Ex. Ord. No. 12771, July 25, 1991, 56 F.R. 35993.

LEBANON

Ex. Ord. No. 13441, Aug. 1, 2007, 72 F.R. 43499.

Continuations of national emergency declared by Ex. Ord. No. 13441 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. 44895.

LIBERIA

Ex. Ord. No. 13213, May 22, 2001, 66 F.R. 28829, as amended by Ex. Ord. No. 13312, §3(d), July 29, 2003, 68 F.R. 45152, revoked by Ex. Ord. No. 13324, Jan. 15, 2004, 69 F.R. 2823.

Ex. Ord. No. 13324, Jan. 15, 2004, 69 F.R. 2823.

Ex. Ord. No. 13348, July 22, 2004, 69 F.R. 44885.

Continuations of national emergency declared by Ex. Ord. No. 13348 were contained in the following:

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 19, 2007, 72 F.R. 40059.

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

Ex. Ord. No. 12543, Jan. 7, 1986, 51 F.R. 875, revoked by Ex. Ord. No. 13357, Sept. 20, 2004, 69 F.R. 56665.

Continuations of national emergency declared by Ex. Ord. No. 12543 were contained in the following:

Notice of President of the United States, dated Jan. 5, 2004, 69 F.R. 847.

Notice of President of the United States, dated Jan. 2, 2003, 68 F.R. 661.

Notice of President of the United States, dated Jan. 3, 2002, 67 F.R. 637.

Notice of President of the United States, dated Jan. 4, 2001, 66 F.R. 1251.

Notice of President of the United States, dated Dec. 29, 1999, 65 F.R. 1999.

Notice of President of the United States, dated Dec. 30, 1998, 64 F.R. 383.

Notice of President of the United States, dated Jan. 2, 1998, 63 F.R. 653.

Notice of President of the United States, dated Jan. 2, 1997, 62 F.R. 587.

Notice of President of the United States, dated Jan. 3, 1996, 61 F.R. 383.

Notice of President of the United States, dated Dec. 22, 1994, 59 F.R. 67119.

Notice of President of the United States, dated Dec. 2, 1993, 58 F.R. 64361.

Notice of President of the United States, dated Dec. 14, 1992, 57 F.R. 59895.

Notice of President of the United States, dated Dec. 26, 1991, 56 F.R. 67465.

Notice of President of the United States, dated Jan. 2, 1991, 56 F.R. 477.

Notice of President of the United States, dated Jan. 4, 1990, 55 F.R. 589.

Notice of President of the United States, dated Dec. 28, 1988, 53 F.R. 52971.

Notice of President of the United States, dated Dec. 15, 1987, 52 F.R. 47891.

Notice of President of the United States, dated Dec. 23, 1986, 51 F.R. 46849.

Ex. Ord. No. 12544, Jan. 8, 1986, 51 F.R. 1235, revoked by Ex. Ord. No. 13357, Sept. 20, 2004, 69 F.R. 56665.

Ex. Ord. No. 12801, Apr. 15, 1992, 57 F.R. 14319, revoked by Ex. Ord. No. 13357, Sept. 20, 2004, 69 F.R. 56665.

Ex. Ord. No. 13357, Sept. 20, 2004, 69 F.R. 56665.

NICARAGUA

Ex. Ord. No. 12513, May 1, 1985, 50 F.R. 18629, revoked by Ex. Ord. No. 12707, Mar. 13, 1990, 55 F.R. 9707.

Continuations of national emergency declared by Ex. Ord. No. 12513 were contained in the following:

Notice of President of the United States, dated Apr. 21, 1989, 54 F.R. 17701.
Notice of President of the United States, dated Apr. 25, 1988, 53 F.R. 15011.
Notice of President of the United States, dated Apr. 21, 1987, 52 F.R. 13425.
Notice of President of the United States, dated Apr. 22, 1986, 51 F.R. 15461.

Ex. Ord. No. 12707, Mar. 13, 1990, 55 F.R. 9707.

NORTH KOREA

Ex. Ord. No. 13466, June 26, 2008, 73 F.R. 36787.

Continuations of national emergency declared by Ex. Ord. No. 13466 were contained in the following:
Notice of President of the United States, dated June 24, 2009, 74 F.R. 30457.

PANAMA

Ex. Ord. No. 12635, Apr. 8, 1988, 53 F.R. 12134, revoked by Ex. Ord. No. 12710, Apr. 5, 1990, 55 F.R. 13099.

Continuation of national emergency declared by Ex. Ord. No. 12635 was contained in the following:
Notice of President of the United States, dated Apr. 6, 1989, 54 F.R. 14197.

Ex. Ord. No. 12710, Apr. 5, 1990, 55 F.R. 13099.

RUSSIA

Ex. Ord. No. 13159, June 21, 2000, 65 F.R. 39279.

Continuations of national emergency declared by Ex. Ord. No. 13159 were contained in the following:
Notice of President of the United States, dated June 18, 2009, 74 F.R. 29391.
Notice of President of the United States, dated June 18, 2008, 73 F.R. 35335.
Notice of President of the United States, dated June 19, 2007, 72 F.R. 34159.
Notice of President of the United States, dated June 19, 2006, 71 F.R. 35489.
Notice of President of the United States, dated June 17, 2005, 70 F.R. 35507.
Notice of President of the United States, dated June 16, 2004, 69 F.R. 34047.
Notice of President of the United States, dated June 10, 2003, 68 F.R. 35149.
Notice of President of the United States, dated June 18, 2002, 67 F.R. 42181.
Notice of President of the United States, dated June 11, 2001, 66 F.R. 32207.

SIERRA LEONE

Ex. Ord. No. 13194, Jan. 18, 2001, 66 F.R. 7389, as amended by Ex. Ord. No. 13312, §3(a)–(c), July 29, 2003, 68 F.R. 45152, revoked by Ex. Ord. No. 13324, Jan. 15, 2004, 69 F.R. 2823.

Continuations of national emergency declared by Ex. Ord. No. 13194 were contained in the following:
Notice of President of the United States, dated Jan. 16, 2003, 68 F.R. 2677.
Notice of President of the United States, dated Jan. 15, 2002, 67 F.R. 2547.

Ex. Ord. No. 13213, May 22, 2001, 66 F.R. 28829, as amended by Ex. Ord. No. 13312, §3(d), July 29, 2003, 68 F.R. 45152, revoked by Ex. Ord. No. 13324, Jan. 15, 2004, 69 F.R. 2823.
Ex. Ord. No. 13324, Jan. 15, 2004, 69 F.R. 2823.

SOUTH AFRICA

Ex. Ord. No. 12532, Sept. 9, 1985, 50 F.R. 36861, revoked by Ex. Ord. No. 12769, §4, July 10, 1991, 56 F.R. 31855.

Continuation of national emergency declared by Ex. Ord. No. 12532 was contained in the following:
Notice of President of the United States, dated Sept. 4, 1986, 51 F.R. 31925.

Ex. Ord. No. 12535, Oct. 1, 1985, 50 F.R. 40325, revoked by Ex. Ord. No. 12769, §4, July 10, 1991, 56 F.R. 31855.

SUDAN

Ex. Ord. No. 13067, Nov. 3, 1997, 62 F.R. 59989.

Continuations of national emergency declared by Ex. Ord. No. 13067 were contained in the following:
Notice of President of the United States, dated Oct. 27, 2009, 74 F.R. 55745.
Notice of President of the United States, dated Oct. 30, 2008, 73 F.R. 65239.
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 Nov. 1, 2004, 69 F.R. 63915.
Notice of President of the United States, dated Oct. 29, 2003, 68 F.R. 62211.
Notice of President of the United States, dated Oct. 29, 2002, 67 F.R. 66525.
Notice of President of the United States, dated Oct. 31, 2001, 66 F.R. 55869.
Notice of President of the United States, dated Oct. 31, 2000, 65 F.R. 66163.
Notice of President of the United States, dated Oct. 29, 1999, 64 F.R. 59105.
Notice of President of the United States, dated Oct. 27, 1998, 63 F.R. 58617.

Ex. Ord. No. 13400, Apr. 26, 2006, 71 F.R. 25483.
Ex. Ord. No. 13412, Oct. 13, 2006, 71 F.R. 61369.

SYRIA

Ex. Ord. No. 13338, May 11, 2004, 69 F.R. 26751, as amended by Ex. Ord. No. 13460, §2, Feb. 13, 2008, 73 F.R. 8991.

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. 26939.
Notice of President of the United States, dated May 8, 2007, 72 F.R. 26707.
Notice of President of the United States, dated May 8, 2006, 71 F.R. 27381.
Notice of President of the United States, dated May 5, 2005, 70 F.R. 24697.

Ex. Ord. No. 13399, Apr. 25, 2006, 71 F.R. 25059.
Ex. Ord. No. 13460, Feb. 13, 2008, 73 F.R. 8991.

WESTERN BALKANS

Ex. Ord. No. 12808, May 30, 1992, 57 F.R. 23299, revoked by Ex. Ord. No. 13304, May 28, 2003, 68 F.R. 32315.

Continuations of national emergency declared by Ex. Ord. No. 12808 were contained in the following:
Notice of President of the United States, dated May 27, 2002, 67 F.R. 37661.
Notice of President of the United States, dated May 24, 2001, 66 F.R. 29007.
Notice of President of the United States, dated May 25, 2000, 65 F.R. 34379.
Notice of President of the United States, dated May 27, 1999, 64 F.R. 29205.
Notice of President of the United States, dated May 28, 1998, 63 F.R. 29527.
Notice of President of the United States, dated May 28, 1997, 62 F.R. 29283.
Notice of President of the United States, dated May 24, 1996, 61 F.R. 26773.
Determination of President, No. 96–7, Dec. 27, 1995, 61 F.R. 2887.
Notice of President of the United States, dated May 10, 1995, 60 F.R. 25599.
Notice of President of the United States, dated May 25, 1994, 59 F.R. 27429.
Notice of President of the United States, dated May 25, 1993, 58 F.R. 30693.

Ex. Ord. No. 12810, June 5, 1992, 57 F.R. 24347, as amended by Ex. Ord. No. 12831, § 4, Jan. 15, 1993, 58 F.R. 5253, revoked by Ex. Ord. No. 13304, May 28, 2003, 68 F.R. 32315.

Ex. Ord. No. 12831, Jan. 15, 1993, 58 F.R. 5253, revoked by Ex. Ord. No. 13304, May 28, 2003, 68 F.R. 32315.

Ex. Ord. No. 12846, Apr. 25, 1993, 58 F.R. 25771, revoked by Ex. Ord. No. 13304, May 28, 2003, 68 F.R. 32315.

Ex. Ord. No. 12934, Oct. 25, 1994, 59 F.R. 54117, revoked by Ex. Ord. No. 13304, May 28, 2003, 68 F.R. 32315.

Ex. Ord. No. 13088, June 9, 1998, 63 F.R. 32109, as amended by Ex. Ord. No. 13121, Apr. 30, 1999, 64 F.R. 24021, eff. May 1, 1999; Ex. Ord. No. 13192, Jan. 17, 2001, 66 F.R. 7379, eff. Jan. 19, 2001, revoked by Ex. Ord. No. 13304, May 28, 2003, 68 F.R. 32315.

Continuations of national emergency declared by Ex. Ord. No. 13088 were contained in the following:

Notice of President of the United States, dated May 27, 2002, 67 F.R. 37661.

Notice of President of the United States, dated May 24, 2001, 66 F.R. 29007.

Notice of President of the United States, dated May 25, 2000, 65 F.R. 34379.

Notice of President of the United States, dated May 27, 1999, 64 F.R. 29205.

Ex. Ord. No. 13219, June 26, 2001, 66 F.R. 34777, as amended by Ex. Ord. No. 13304, May 28, 2003, 68 F.R. 32315.

Continuations of national emergency declared by Ex. Ord. No. 13219 were contained in the following:

Notice of President of the United States, dated June 22, 2009, 74 F.R. 30209.

Notice of President of the United States, dated June 24, 2008, 73 F.R. 36255.

Notice of President of the United States, dated June 22, 2007, 72 F.R. 34981.

Notice of President of the United States, dated June 22, 2006, 71 F.R. 36183.

Notice of President of the United States, dated June 23, 2005, 70 F.R. 36803.

Notice of President of the United States, dated June 24, 2004, 69 F.R. 36005.

Notice of President of the United States, dated June 20, 2003, 68 F.R. 37389.

Notice of President of the United States, dated June 21, 2002, 67 F.R. 42703.

Ex. Ord. No. 13304, May 28, 2003, 68 F.R. 32315.

ZIMBABWE

Ex. Ord. No. 13288, Mar. 6, 2003, 68 F.R. 11457, as amended by Ex. Ord. No. 13391, Nov. 22, 2005, 70 F.R. 71201.

Continuations of national emergency declared by Ex. Ord. No. 13288 were contained in the following:

Notice of President of the United States, dated Mar. 3, 2009, 74 F.R. 9751.

Notice of President of the United States, dated Mar. 4, 2008, 73 F.R. 12005.

Notice of President of the United States, dated Feb. 28, 2007, 72 F.R. 9645.

Notice of President of the United States, dated Feb. 27, 2006, 71 F.R. 10603.

Notice of President of the United States, dated Mar. 2, 2005, 70 F.R. 10859.

Notice of President of the United States, dated Mar. 2, 2004, 69 F.R. 10313.

Ex. Ord. No. 13469, July 25, 2008, 73 F.R. 43841.

§ 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, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and.[1]

(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 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

[1] So in original. The period probably should not appear.

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[2]

(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 nonproliferation 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.

(Pub. L. 95–223, title II, §203, Dec. 28, 1977, 91 Stat. 1626; Pub. L. 100–418, title II, §2502(b)(1), Aug. 23, 1988, 102 Stat. 1371; Pub. L. 103–236, title V, §525(c)(1), Apr. 30, 1994, 108 Stat. 474; Pub. L. 107–56, title I, §106, Oct. 26, 2001, 115 Stat. 277.)

[2] So in original. The word ''or'' probably should not appear.

REFERENCES IN TEXT

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (c), is section 1(a) of Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, 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)(C), 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)(A). Pub. L. 107–56, §106(1)(A), substituted a comma for ''; and'' at end of cl. (iii) and inserted 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; and'' for ''interest;''.

Subsec. (a)(1)(C). Pub. L. 107–56, §106(1)(D), added subpar. (C).

Subsec. (c). Pub. L. 107–56, §106(2), added subsec. (c).

1994—Subsec. (b)(3), (4). Pub. L. 103–236 added pars. (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.''

1988—Subsec. (b)(3). Pub. L. 100–418 added par. (3).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 525(c)(2) and (3) of Pub. L. 103–236 provided that:

''(2) The amendments made by paragraph (1) to section 203(b)(3) of the International Emergency Economic Powers Act [50 U.S.C. 1702(b)(3)] apply to actions taken by the President under section 203 of such Act before the date of enactment of this Act [Apr. 30, 1994] which are in effect on such date and to actions taken under such section on or after such date.

''(3) Section 203(b)(4) of the International Emergency Economic Powers Act (as added by paragraph (1)) shall not apply to restrictions on the transactions and activities described in section 203(b)(4) in force on the date of enactment of this Act, with respect to countries embargoed under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.] on the date of enactment of this Act.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2502(b)(2) of Pub. L. 100–418 provided that: ''The amendments made by paragraph (1) [amending this section] apply to actions taken by the President under section 203 of the International Emergency Economic Powers Act [this section] before the date of the enactment of this Act [Aug. 23, 1988] which are in effect on such date of enactment, and to actions taken under such section on or after such date of enactment.''

EX. ORD. NO. 13290. CONFISCATING AND VESTING CERTAIN IRAQI PROPERTY

Ex. Ord. No. 13290, Mar. 20, 2003, 68 F.R. 14307, as amended by Ex. Ord. No. 13350, §3, July 29, 2004, 69 F.R. 46055, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the national emergency declared in Executive Order 13303 of March 20 [May 22], 2003 [listed in a table under section 1701 of this title], and expanded in Executive Order 13315 of August 28, 2003 [listed in a table under section 1701 of this title],

I, GEORGE W. BUSH, President of the United States of America, hereby determine that the United States and Iraq are engaged in armed hostilities, that it is in the interest of the United States to confiscate certain property of the Government of Iraq and its agencies, instrumentalities, or controlled entities, and that all right, title, and interest in any property so confiscated should vest in the Department of the Treasury. I intend that such vested property should be used to assist the Iraqi people and to assist in the reconstruction of Iraq, and determine that such use would be in the interest of and for the benefit of the United States.

I hereby order:

SECTION 1. All blocked funds held in the United States in accounts in the name of the Government of Iraq, the Central Bank of Iraq, Rafidain Bank, Rasheed Bank, or the State Organization for Marketing Oil are hereby confiscated and vested in the Department of the Treasury, except for the following:

(a) any such funds that are subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoy equivalent privileges and immunities under the laws of the United States, and are or have been used for diplomatic or consular purposes, and

(b) any such amounts that as of the date of this order are subject to post-judgment writs of execution or attachment in aid of execution of judgments pursuant to section 201 of the Terrorism Risk Insurance Act of 2002 (Public Law 107–297) [see Tables for classification], provided that, upon satisfaction of the judgments on which such writs are based, any remainder of such excepted amounts shall, by virtue of this order and without further action, be confiscated and vested.

SEC. 2. The Secretary of the Treasury is authorized to perform, without further approval, ratification, or other action of the President, all functions of the President set forth in section 203(a)(1)(C) of IEEPA [50 U.S.C. 1702(a)(1)(C)] with respect to any and all property of the Government of Iraq, including its agencies, instrumentalities, or controlled entities, and to take additional steps, including the promulgation of rules and regulations as may be necessary, to carry out the purposes of this order. The Secretary of the Treasury may redelegate such functions in accordance with applicable law. The Secretary of the Treasury shall consult the Attorney General as appropriate in the implementation of this order.

SEC. 3. This order shall be transmitted to the Congress 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 exercising 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 Presidential authorities

Whenever the President exercises any of the authorities granted by this chapter, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an 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;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; 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 pursuant 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 occurred 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 supplemental to those contained in title IV of the National Emergencies Act [50 U.S.C. 1641].

(Pub. L. 95–223, title II, § 204, Dec. 28, 1977, 91 Stat. 1627.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (d), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title IV of the National Emergencies Act enacted subchapter IV (§ 1641) of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

DELEGATION OF FUNCTIONS

Delegations of congressional reporting functions of President under subsec. (c) of this section were contained in the following:

Ex. Ord. No. 13441, § 6, Aug. 1, 2007, 72 F.R. 43500, listed in a table under section 1701 of this title.

Ex. Ord. No. 13396, § 6, Feb. 7, 2006, 71 F.R. 7391, listed in a table under section 1701 of this title.

Ex. Ord. No. 13348, § 7, July 22, 2004, 69 F.R. 44887, listed in a table under section 1701 of this title.

Ex. Ord. No. 13338, § 12, May 11, 2004, 69 F.R. 26754, listed in a table under section 1701 of this title.

Ex. Ord. No. 13313, § 1, July 31, 2003, 68 F.R. 46073 to 46075, set out in a note under section 301 of Title 3, The President.

§ 1704. Authority to issue regulations

The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this chapter.

(Pub. L. 95–223, title II, § 205, Dec. 28, 1977, 91 Stat. 1628.)

§ 1705. Penalties

(a) Unlawful acts

It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this chapter.

(b) Civil penalty

A civil penalty may be imposed on any person who commits an unlawful act described in subsection (a) in an amount not to exceed the greater of—

(1) $250,000; or

(2) an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(c) Criminal penalty

A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act described in subsection (a) shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(Pub. L. 95–223, title II, § 206, Dec. 28, 1977, 91 Stat. 1628; Pub. L. 102–393, title VI, § 629, Oct. 6, 1992, 106 Stat. 1773; Pub. L. 102–396, title IX, § 9155, Oct. 6, 1992, 106 Stat. 1943; Pub. L. 104–201, div. A, title XIV, § 1422, Sept. 23, 1996, 110 Stat. 2725; Pub. L. 109–177, title IV, § 402, Mar. 9, 2006, 120 Stat. 243; Pub. L. 110–96, § 2(a), Oct. 16, 2007, 121 Stat. 1011.)

AMENDMENTS

2007—Pub. L. 110–96 amended section generally. Prior to amendment, text of section read as follows:

''(a) A civil penalty of not to exceed $50,000 may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under this chapter.

''(b) Whoever willfully violates, or willfully attempts to violate, any license, order, or regulation issued under this chapter shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than twenty years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–96, § 2(b), Oct. 16, 2007, 121 Stat. 1011, provided that:

''(1) CIVIL PENALTIES.—Section 206(b) of the International Emergency Economic Powers Act [50 U.S.C. 1705(b)], as amended by subsection (a), shall apply to violations described in section 206(a) of such Act with respect to which enforcement action is pending or commenced on or after the date of the enactment of this Act [Oct. 16, 2007].

''(2) CRIMINAL PENALTIES.—Section 206(c) of the International Emergency Economic Powers Act, as amended by subsection (a), shall apply to violations described in section 206(a) of such Act with respect to which enforcement action is commenced on or after the date of the enactment of this Act.''

2006—Subsec. (a). Pub. L. 109–177, § 402(1), substituted ''$50,000'' for ''$10,000''.

Subsec. (b). Pub. L. 109–177, § 402(2), substituted ''twenty years'' for ''ten years''.

1996—Subsec. (a). Pub. L. 104–201, § 1422(1), inserted '', or attempts to violate,'' after ''violates''.

Subsec. (b). Pub. L. 104–201, § 1422(2), inserted '', or willfully attempts to violate,'' after ''violates''.

1992—Subsec. (a). Pub. L. 102–396 substituted ''$10,000'' for ''$50,000''.

Pub. L. 102–393 substituted ''$50,000'' for ''$10,000''.

§ 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 exercised 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; supersedure 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.

(Pub. L. 95–223, title II, § 207, Dec. 28, 1977, 91 Stat. 1628.)

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 34 (§ 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 Short Title note set out under section 1601 of this title and 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 5 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 hostilities described in subsection (a) of this section, the President shall, if the armed conflict has continued for 14 days, submit to Congress a report setting forth—

(1) the specific steps the United States has taken and will continue to take to establish a multinational economic embargo and to initiate financial asset seizure pursuant to subsection (a) of this section; and

(2) any foreign sources of trade or revenue that directly or indirectly support the ability of the adversarial government to sustain a military conflict against the United States.

(Pub. L. 106–65, div. A, title XII, § 1231, Oct. 5, 1999, 113 Stat. 788.)

CODIFICATION

This section enacted as part of the National Defense Authorization Act for Fiscal Year 2000, and not as part of the International Emergency Economic Powers Act which comprises this chapter.

CHAPTER 36—FOREIGN INTELLIGENCE SURVEILLANCE

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SUBCHAPTER I—ELECTRONIC SURVEILLANCE

§ 1801. Definitions

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; or

(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) or 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 the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) ''Sabotage'' means activities that involve a violation of chapter 105 of title 18, or that would involve such a violation if committed against the United States.

(e) ''Foreign intelligence information'' means—

(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to 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; or

(2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) ''Electronic surveillance'' means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication 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 expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, 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 acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio 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; or

(4) 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 expectation of privacy and a warrant would be required for law enforcement purposes.

(g) ''Attorney General'' means the Attorney General of the United States (or Acting Attorney General), 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.

(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 nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign 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 necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), 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

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance 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 disclosed, 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 determines 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 admitted 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 residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.

(j) ''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.

(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.

(*l*) ''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 concerning the identity of the parties to 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 de-

fined 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; or

(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.

(Pub. L. 95–511, title I, § 101, Oct. 25, 1978, 92 Stat. 1783; Pub. L. 106–120, title VI, § 601, Dec. 3, 1999, 113 Stat. 1619; Pub. L. 107–56, title X, § 1003, Oct. 26, 2001, 115 Stat. 392; Pub. L. 107–108, title III, § 314(a)(1), (c)(2), Dec. 28, 2001, 115 Stat. 1402, 1403; Pub. L. 108–458, title VI, § 6001(a), Dec. 17, 2004, 118 Stat. 3742; Pub. L. 109–177, title V, § 506(a)(5), Mar. 9, 2006, 120 Stat. 248; Pub. L. 110–261, title I, § 110(a), July 10, 2008, 122 Stat. 2465.)

AMENDMENT OF SECTION

For termination of amendment by Pub. L. 108–458, see Termination Date of 2004 Amendment note below.

AMENDMENTS

2008—Subsec. (a)(7). Pub. L. 110–261, § 110(a)(1), added par. (7).

Subsec. (b)(1)(D), (E). Pub. L. 110–261, § 110(a)(2), added subpars. (D) and (E).

Subsec. (e)(1)(B). Pub. L. 110–261, § 110(a)(3), substituted ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction'' for ''sabotage or international terrorism''.

Subsec. (p). Pub. L. 110–261, § 110(a)(4), added subsec. (p).

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 ''or the Deputy Attorney General''.

2004—Subsec. (b)(1)(C). Pub. L. 108–458, § 6001, temporarily added subpar. (C). See Termination Date of 2004 Amendment note below.

2001—Subsec. (f)(2). Pub. L. 107–56, § 1003, as amended by Pub. L. 107–108, § 314(c)(2), inserted '', but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18'' before semicolon at end.

Subsec. (h)(4). Pub. L. 107–108, § 314(a)(1), substituted ''72 hours'' for ''twenty-four hours''.

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. 3742, as amended by Pub. L. 109–177, title I, § 103, Mar. 9, 2006, 120 Stat. 195; Pub. L. 111–118, div. B, § 1004(b), Dec. 19, 2009, 123 Stat. 3470, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall cease to have effect on February 28, 2010.

''(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. 1402, provided in part that the amendment made by section 314(c)(2) of Pub. L. 107–108 is effective as of Oct. 26, 2001, and as if included in Pub. L. 107–56 as originally enacted.

EFFECTIVE DATE; EXCEPTION

Pub. L. 95–511, title VII, § 701, formerly title III, § 301, Oct. 25, 1978, 92 Stat. 1798, as renumbered title IV, § 401, and amended by Pub. L. 103–359, title VIII, § 807(a)(1), (2), Oct. 14, 1994, 108 Stat. 3443; renumbered title VI, § 601, and amended Pub. L. 105–272, title VI, §§ 601(1), 603(a), Oct. 20, 1998, 112 Stat. 2404, 2412; renumbered title VII, § 701, Pub. L. 108–458, title VI, § 6002(a)(1), Dec. 17, 2004, 118 Stat. 3743, which provided that the provisions of 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 below] (other than titles III, IV, and V [enacting subchapters II, III, and IV, respectively, of this chapter]) and the amendments made hereby shall become effective upon the date of enactment of this Act [Oct. 25, 1978], 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 103 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 1812 and subchapters 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 Act 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 section 9A of the Classified Information Procedures Act, set out in the Appendix to Title 18, Crimes and Criminal Procedure, amending sections 402a, 1804, 1805, 1808, 1823, and 1824 of this title, and enacting provisions set out as notes under this section and section 1806 of 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, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, of any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.''

Pub. L. 106–567, title VI, § 608, Dec. 27, 2000, 114 Stat. 2856, provided that: ''If any provision of this title [see Short Title of 2000 Amendment note above] (including an amendment made by this title), or the application thereof, to any person or circumstance, is held invalid, the remainder of this title (including the amendments made by this title), and the application thereof, to other persons or circumstances shall not be affected thereby.''

TRANSITION PROCEDURES

Pub. L. 110–261, title IV, § 404, July 10, 2008, 122 Stat. 2474, provided that:

''(a) TRANSITION PROCEDURES FOR PROTECT AMERICA ACT OF 2007 PROVISIONS.—

''(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 105B 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.

''(2) APPLICABILITY OF PROTECT AMERICA ACT OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act [see Short Title of 2008 Amendment note above], any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

''(A) subject to paragraph (3), section 105A of such Act [50 U.S.C. 1805a], as added by section 2 of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 552), shall continue to apply to any acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1); and

''(B) sections 105B and 105C of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b, 1805c], as added by sections 2 and 3, respectively, of the Protect America Act of 2007, shall continue to apply with respect to an order, authorization, or directive referred to in paragraph (1) until the later of—

''(i) the expiration of such order, authorization, or directive; or

''(ii) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

''(3) USE OF INFORMATION.—Information acquired from an acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1) shall be deemed to be information acquired from an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of such Act (50 U.S.C. 1806), except for purposes of subsection (j) of such section.

''(4) PROTECTION FROM LIABILITY.—Subsection (*l*) of section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b(*l*)], as added by section 2 of the Protect America Act of 2007, shall continue to apply with respect to any directives issued pursuant to such section 105B.

''(5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 103(e) of the Foreign Intelligence Surveillance Act [of 1978] (50 U.S.C. 1803(e)), as amended by section 5(a) of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 556), shall continue to apply with respect to a directive issued pursuant to section 105B 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, until the later of—

''(A) the expiration of all orders, authorizations, or directives referred to in paragraph (1); or

''(B) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

''(6) REPORTING REQUIREMENTS.—

''(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act, any amendment made by this Act, the Protect America Act of 2007 (Public Law 110–55) [see Short Title of 2007 Amendment note above], or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 4 of the Protect America Act of 2007 [121 Stat. 555] shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

''(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

''(i) made by the Attorney General;

''(ii) submitted as part of a semi-annual report required by section 4 of the Protect America Act of 2007;

''(iii) that states that there will be no further acquisitions carried out under section 105B 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, after the date of such certification; and

''(iv) that states that the information required to be included under such section 4 relating to any acquisition conducted under such section 105B has been included in a semi-annual report required by such section 4.

''(7) REPLACEMENT OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—

''(A) IN GENERAL.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to section 105B 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), 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. 1881(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 authorization.

''(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, 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(i)(3) of such Act (as so added) at which time the provisions of that section and of section 702(i)(4) of such Act (as so added) shall apply.

''(8) 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 order, authorization, or directive issued or made 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.), with respect to any order, authorization, or directive referred to in paragraph (1), title VII of such Act, as amended by section 101(a), shall continue to apply until the later of—

''(A) the expiration of such order, authorization, or directive; or

''(B) the date on which final judgment is entered for any petition or other litigation relating to 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. 1881a(h)], as added by section 101(a);

''(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);

''(C) section 703(e) of such Act [50 U.S.C. 1881b(e)] (as so added) shall continue to apply with respect to an order or request for emergency assistance under that section;

''(D) section 706 of such Act [50 U.S.C. 1881e] (as so added) shall continue to apply to an acquisition conducted under section 702 or 703 of such Act (as so added); and

''(E) section 2511(2)(a)(ii)(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. 1881c] 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. 1801 et seq.), section 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections 702(*l*) and 707 of such Act, [50 U.S.C. 1881a(*l*), 1881f] as added by section 101(a), shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

''(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. 1881 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), or 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 carrier; 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 1801(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 1801(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 1808(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 subchapter 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.

(Pub. L. 95–511, title I, § 102, Oct. 25, 1978, 92 Stat. 1786; Pub. L. 108–458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

AMENDMENTS

2004—Subsec. (a)(3), (4)(B). Pub. L. 108–458 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.

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; Transition Provisions note under section 401 of this title.

EX. ORD. NO. 12139. EXERCISE OF CERTAIN AUTHORITY RESPECTING ELECTRONIC SURVEILLANCE

Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, as amended by Ex. Ord. No. 13383, § 1, July 15, 2005, 70 F.R. 41933; Ex. Ord. No. 13475, § 1, Oct. 7, 2008, 73 F.R. 60095, provided:

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.

1–104. Section 2–202 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.''.

1–105. 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 monitoring which constitutes 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 so 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 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 1881a(h)(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 1881a(h)(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 of 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.

(i)[1] Compliance with orders, rules, 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.

(Pub. L. 95–511, title I, § 103, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 107–56, title II, § 208, Oct. 26, 2001, 115 Stat. 283; Pub. L. 108–458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109–177, title I, §§ 106(f)(1), 109(d), Mar. 9, 2006, 120 Stat. 197, 205; Pub. L. 110–55, § 5(a), Aug. 5, 2007, 121 Stat. 556; Pub. L. 110–261, title I, § 109(a)–(b)(2)(A), (c), (d), title IV, § 403(a)(1)(B)(ii), July 10, 2008, 122 Stat. 2464, 2465, 2474.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c), (f), (g)(1), and (i), 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

2008—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).

Subsec. (e)(1), (2). Pub. L. 110–261, § 403(a)(1)(B)(ii), which directed substitution of ''1861(f)(1) or 1881a(h)(4)'' for ''1805b(h) or 1861(f)(1)'', was executed by making the substitution for ''1861(f)(1)'' to reflect the probable intent of Congress and termination of the temporary amendment by Pub. L. 110–55, § 5(a). See 2007 Amendment note and Effective and Termination Dates of 2007 Amendment note below.

Subsecs. (f), (g). Pub. L. 110–261, § 109(c), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (i). Pub. L. 110–261, § 109(d), added subsec. (i).

2007—Subsec. (e). Pub. L. 110–55, §§ 5(a), 6(c), temporarily substituted ''1805b(h) or 1861(f)(1)'' for ''1861(f)(1)'' in pars. (1) and (2). See Effective and Termination Dates of 2007 Amendment note below.

2006—Subsecs. (e), (f). Pub. L. 109–177 added subsecs. (e) and (f).

2004—Subsec. (c). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

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

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 of this title.

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Pub. L. 110–55, § 6, Aug. 5, 2007, 121 Stat. 556, as amended by Pub. L. 110–182, § 1, Jan. 31, 2008, 122 Stat. 605; Pub. L. 110–261, title IV, § 403(a)(3), July 10, 2008, 122 Stat. 2474, provided that:

''(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].

''[(b) Repealed. Pub. L. 110–261, title IV, § 403(a)(3), July 10, 2008, 122 Stat. 2474.]

''(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)).''

[Repeal by Pub. L. 110–261 of section 6(b) of Pub. L. 110–55, set out above, effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 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.

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; Transition Provisions note under section 401 of this title.

§ 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] So in original. No subsec. (h) has been enacted.

(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 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 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 subparagraph. Except when disabled or otherwise unavailable to supervise the making of any modi-

fication 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.

(Pub. L. 95–511, title I, § 104, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 106–567, title VI, § 602(a), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107–56, title II, § 218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108–458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109–177, title I, § 108(a)(1), Mar. 9, 2006, 120 Stat. 203; Pub. L. 110–261, title I, § 104, July 10, 2008, 122 Stat. 2460.)

AMENDMENTS

2008—Subsec. (a)(2) to (4). Pub. L. 110–261, § 104(1)(A), (B), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;''.

Subsec. (a)(5). Pub. L. 110–261, § 104(1)(B), (C), redesignated par. (6) as (5) and struck out ''detailed'' before ''description''. Former par. (5) redesignated (4).

Subsec. (a)(6). Pub. L. 110–261, § 104(1)(B), (D), redesignated par. (7) as (6) and substituted ''Affairs,'' for ''Affairs or'' and ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—'' for ''Senate—'' in introductory provisions. Former par. (6) redesignated (5).

Subsec. (a)(7). Pub. L. 110–261, § 104(1)(B), (E), redesignated par. (8) as (7) and substituted ''summary statement of'' for ''statement of''. Former par. (7) redesignated (6).

Subsec. (a)(8) to (11). Pub. L. 110–261, § 104(1)(A), (B), redesignated pars. (9) and (10) as (8) and (9), respectively, and struck out par. (11) which read as follows: ''whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.'' Former par. (8) redesignated (7).

Subsecs. (b) to (e). Pub. L. 110–261, § 104(2)–(4), redesignated subsecs. (c) to (e) as (b) to (d), respectively, in subsec. (d)(1)(A) substituted ''the Director of National Intelligence, or the Director of the Central Intelligence Agency'' for ''or the Director of National Intelligence'', and struck out former subsec. (b) which related to exclusion of certain information respecting foreign power targets.

2006—Subsec. (a)(3). Pub. L. 109–177 inserted ''specific'' before ''target''.

2004—Subsec. (e)(1)(A). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2001—Subsec. (a)(7)(B). Pub. L. 107–56 substituted ''a significant purpose'' for ''the purpose''.

2000—Subsec. (e). Pub. L. 106–567 added subsec. (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 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.

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; Transition Provisions note under section 401 of this title.

DESIGNATION OF CERTAIN 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 certification or certifications are not clearly erroneous on the basis of the statement made under section 1804(a)(7)(E)[1] of this title and any other information furnished under section 1804(d)[1] 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;

[1] See References in Text note below.

(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.

(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 electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance 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 surveillance 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.

(6) The Attorney General shall assess compliance with the requirements of paragraph (5).

(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 ten years 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.

(Pub. L. 95–511, title I, § 105, Oct. 25, 1978, 92 Stat. 1790; Pub. L. 98–549, § 6(b)(3), Oct. 30, 1984, 98 Stat. 2804; Pub. L. 106–567, title VI, § 602(b), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107–56, title II, §§ 206, 207(a)(1), (b)(1), 225, Oct. 26, 2001, 115 Stat. 282, 295; Pub. L. 107–108, title III, § 314(a)(2), (c)(1),

Dec. 28, 2001, 115 Stat. 1402, 1403; Pub. L. 107–273, div. B, title IV, §4005(c), Nov. 2, 2002, 116 Stat. 1812; Pub. L. 108–458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109–177, title I, §§102(b)(1), 105(a), 108(a)(2), (b), Mar. 9, 2006, 120 Stat. 195, 203; Pub. L. 110–261, title I, §§105(a), 110(c)(1), July 10, 2008, 122 Stat. 2461, 2466; Pub. L. 111–118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470.)

AMENDMENT OF SUBSECTION (c)(2)

Pub. L. 109–177, title I, §102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111–118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470, provided that, effective Feb. 28, 2010, with certain exceptions, subsec. (c)(2) of this section is amended to read as it read on Oct. 25, 2001:

(2) 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 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 Central 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.

REFERENCES IN TEXT

Section 1804(a)(7)(E) of this title, referred to in subsec. (a)(4), was redesignated section 1804(a)(6)(E) of this title by Pub. L. 110–261, title I, §104(1)(B), July 10, 2008, 122 Stat. 2461.

Section 1804(d) of this title, referred to in subsec. (a)(4), was redesignated section 1804(c) of this title by Pub. L. 110–261, title I, §104(3), July 10, 2008, 122 Stat. 2461.

This chapter, referred to in subsecs. (d) 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.

CODIFICATION

As originally enacted, Pub. L. 107–56, §225, amended this section by adding subsec. (h) relating to bar of legal action after subsec. (g). The section already contained a subsec. (h). Both Pub. L. 107–108, §314(a)(2)(C), and Pub. L. 107–273, §4005(c), made amendments retroactive to the date of enactment of Pub. L. 107–56 which had the effect of redesignating subsec. (h), relating to bar of legal action, as subsec. (i) and transferring it to appear at the end of this section. See 2001 Amendment notes, Effective Date of 2002 Amendment note, and Effective Date of 2001 Amendment note below.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–261, §105(a)(1), redesignated pars. (2) to (5) as (1) to (4), respectively, and struck out former par. (1) which read as follows: ''the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;''.

Subsec. (b). Pub. L. 110–261, §105(a)(2), substituted ''(a)(2)'' for ''(a)(3)''.

Subsec. (c)(1)(D) to (F). Pub. L. 110–261, §105(a)(3), inserted ''and'' after semicolon at and of subpar. (D), substituted a period for ''; and'' in subpar. (E), and struck out subpar. (F) which read as follows: ''whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization 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—

''(1) specify—''.

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)(1)(F). Pub. L. 109–177, §108(b)(2), substituted period for ''; and'' at end.

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. (c)(3). Pub. L. 109–177, §108(b)(4), added par. (3).

Subsec. (e)(1)(B). Pub. L. 109–177, §105(a)(1), substituted ''who is not a United States person'' for '', 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''.

2004—Subsec. (c)(2)(C). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2002—Subsec. (i). Pub. L. 107–273 amended Pub. L. 107–56, §225. See 2001 Amendment notes below.

2001—Subsec. (c)(1)(B). Pub. L. 107–108, §314(a)(2)(A), inserted '', if known'' before semicolon at end.

Subsec. (c)(2)(B). Pub. L. 107–56, §206, inserted '', or in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons,'' after ''specified person''.

Subsec. (e)(1). 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, § 207(b)(1), as amended by Pub. L. 107–108, § 314(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.

Subsec. (f). Pub. L. 107–108, § 314(a)(2)(B), substituted ''72 hours'' for ''twenty-four hours'' in two places in concluding provisions.

Subsec. (h). Pub. L. 107–108, § 314(a)(2)(C), transferred subsec. (h) added by section 225 of Pub. L. 107–56 to appear after the subsec. (h) redesignated by section 602(b)(2) of Pub. L. 106–567, and redesignated the transferred subsec. (h) as subsec. (i). See Codification note above.

Subsec. (i). Pub. L. 107–108, § 314(a)(2)(D), inserted ''for electronic surveillance or physical search'' before period at end.

Pub. L. 107–108, § 314(a)(2)(C), transferred subsec. (h) added by section 225 of Pub. L. 107–56 to appear after the subsec. (h) redesignated by section 602(b)(2) of Pub. L. 106–567, and redesignated the transferred subsec. (h) as subsec. (i). See Codification note above.

Pub. L. 107–56, § 225, as amended by Pub. L. 107–273, § 4005(c), added subsec. (i) relating to bar of legal action.

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 VI (section 601 et seq.) of chapter 5 of Title 47, Telegraphs, Telephones, 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

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–177, title I, § 102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111–118, div. B, § 1004(a), Dec. 19, 2009, 123 Stat. 3470, provided that:

''(1) IN GENERAL.—Effective February 28, 2010, the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.] is amended so that sections 501, 502, and 105(c)(2) [50 U.S.C. 1861, 1862, and 1805(c)(2)] read as they read on October 25, 2001.

''(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.

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; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4005(c), Nov. 2, 2002, 116 Stat. 1812, provided that the amendment made by section 4005(c) is effective Oct. 26, 2001.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–108, title III, § 314(c), Dec. 28, 2001, 115 Stat. 1402, provided in part that the amendment made by section 314(c)(1) of Pub. L. 107–108 is effective as of Oct. 26, 2001, and as if included in Pub. L. 107–56 as originally enacted.

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, Telegraphs, Telephones, and Radiotelegraphs.

§§ 1805a to 1805c. Repealed. Pub. L. 110–261, title IV, § 403(a)(1)(A), July 10, 2008, 122 Stat. 2473

Section 1805a, Pub. L. 95–511, title I, § 105A, as added Pub. L. 110–55, § 2, Aug. 5, 2007, 121 Stat. 552, related to clarification of electronic surveillance of persons outside the United States.

Section 1805b, Pub. L. 95–511, title I, § 105B, as added Pub. L. 110–55, § 2, Aug. 5, 2007, 121 Stat. 552, related to additional procedure for authorizing certain acquisitions concerning persons located outside the United States.

Section 1805c, Pub. L. 95–511, title I, § 105C, as added Pub. L. 110–55, § 3, Aug. 5, 2007, 121 Stat. 555, related to submission to court review of procedures.

EFFECTIVE DATE OF REPEAL

Repeal effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 of this title.

§ 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)[1] of this title or the entry of an order under section 1805 of this title.

(Pub. L. 95–511, title I, § 106, Oct. 25, 1978, 92 Stat. 1793; Pub. L. 107–56, title V, § 504(a), Oct. 26, 2001, 115 Stat. 364; Pub. L. 107–296, title VIII, § 898, Nov. 25, 2002, 116 Stat. 2258; Pub. L. 110–261, title I, §§ 106, 110(b)(1), July 10, 2008, 122 Stat. 2462, 2466.)

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.

Section 1804(a)(7)(B) of this title, referred to in subsec. (k)(2), was redesignated section 1804(a)(6)(B) of this title by Pub. L. 110–261, title I, § 104(1)(B), July 10, 2008, 122 Stat. 2461.

AMENDMENTS

2008—Subsec. (i). Pub. L. 110–261, § 106, substituted ''communication'' for ''radio communication''.

Subsec. (k)(1)(B). Pub. L. 110–261, § 110(b)(1), substituted ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction'' for ''sabotage or international terrorism''.

2002—Subsec. (k)(1). Pub. L. 107–296, in introductory provisions, inserted ''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)'' after ''law enforcement officers''.

2001—Subsec. (k). Pub. L. 107–56 added subsec. (k).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment 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.

REPORT ON MECHANISMS FOR DETERMINATIONS OF DISCLOSURE OF INFORMATION FOR LAW ENFORCEMENT PURPOSES

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.

(Pub. L. 95–511, title I, § 107, Oct. 25, 1978, 92 Stat. 1795.)

§ 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 semiannual 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

[1] See References in Text note below.

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 authorized for use at trial during the period covered by such report; and

(C) the total number of emergency employments 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.

(Pub. L. 95–511, title I, § 108, Oct. 25, 1978, 92 Stat. 1795; Pub. L. 106–567, title VI, § 604(a), Dec. 27, 2000, 114 Stat. 2853; Pub. L. 109–177, title I, § 108(c), Mar. 9, 2006, 120 Stat. 204; Pub. L. 110–261, title I, § 105(b), July 10, 2008, 122 Stat. 2462.)

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

2008—Subsec. (a)(2)(C). Pub. L. 110–261 substituted ''1805(e)'' for ''1805(f)''.

2006—Subsec. (a)(1). Pub. L. 109–177, § 108(c)(1), inserted '', and the Committee on the Judiciary of the Senate,'' after ''Senate Select Committee on Intelligence''.

Subsec. (a)(2). Pub. L. 109–177, § 108(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Each report under the first sentence of paragraph (1) shall include a description of—

''(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 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 of this title.

§ 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.;[1] or

(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..[1]

(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.

(Pub. L. 95–511, title I, § 109, Oct. 25, 1978, 92 Stat. 1796; Pub. L. 110–261, title I, § 102(b), July 10, 2008, 122 Stat. 2459.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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

2008—Subsec. (a). 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

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 of this title.

§ 1810. Civil liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined

[1] So in original.

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.

(Pub. L. 95–511, title I, § 110, Oct. 25, 1978, 92 Stat. 1796.)

§ 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.

(Pub. L. 95–511, title I, § 111, Oct. 25, 1978, 92 Stat. 1796.)

§ 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).

(Pub. L. 95–511, title I, § 112, as added Pub. L. 110–261, title I, § 102(a), July 10, 2008, 122 Stat. 2459.)

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. 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.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 of this title.

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 for-

eign 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.

(Pub. L. 95–511, title III, § 301, as added Pub. L. 103–359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3443; amended Pub. L. 107–108, title III, § 314(a)(3), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 110–261, title I, § 110(c)(2), July 10, 2008, 122 Stat. 2467.)

PRIOR PROVISIONS

A prior section 301 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

2008—Par. (1). Pub. L. 110–261 which directed the insertion of ''weapon of mass destruction,'' after ''person,'', was executed by inserting '' 'weapon of mass destruction','' after '' 'person','' to reflect the probable intent of Congress.

2001—Par. (4)(D). Pub. L. 107–108 substituted ''72 hours'' for ''24 hours''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE

Section 807(c) of Pub. L. 103–359 provided that: ''The amendments made by subsections (a) and (b) [enacting this subchapter and amending provisions set out as a note under section 1801 of this title] shall take effect 90 days after the date of enactment of this Act [Oct. 14, 1994], except that any physical search approved by the Attorney General of the United States to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of title III of the Foreign Intelligence Surveillance Act of 1978 [this subchapter] (as added by this Act), if that search is conducted within 180 days after the date of enactment of this Act pursuant to regulations issued by the Attorney General, which were in the possession of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the date of enactment of this Act.''

§ 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);

(ii) there is no substantial likelihood that the physical search will involve the premises, information, material, or property of a United States person; and

(iii) the proposed minimization procedures with respect to such physical search meet the definition of minimization procedures under paragraphs (1) through (4)[1] 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.

[1] So in original. Probably should be ''subparagraphs (A) through (D)''.

(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 1803(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) Expeditious 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.

(Pub. L. 95–511, title III, § 302, as added Pub. L. 103–359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3444; amended Pub. L. 108–458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 110–261, title I, § 109(b)(2)(B), July 10, 2008, 122 Stat. 2465.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–261 inserted ''(except when sitting en banc)'' after ''except that no judge''.

2004—Subsecs. (a)(3), (4)(A)(ii), (e). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 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.

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; Transition Provisions note under section 401 of this title.

EX. ORD. NO. 12949. FOREIGN INTELLIGENCE PHYSICAL SEARCHES

Ex. Ord. No. 12949, Feb. 9, 1995, 60 F.R. 8169, as amended by Ex. Ord. No. 13383, § 2, July 15, 2005, 70 F.R. 41933; Ex. Ord. No. 13475, § 2, Oct. 7, 2008, 73 F.R. 60095, provided:

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.

SEC. 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.

SEC. 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 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 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 su-

pervise 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.

(Pub. L. 95–511, title III, § 303, as added Pub. L. 103–359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3446; amended Pub. L. 106–567, title VI, § 603(a), Dec. 27, 2000, 114 Stat. 2852; Pub. L. 107–56, title II, § 218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108–458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 110–261, title I, § 107(a), July 10, 2008, 122 Stat. 2462.)

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–261, § 107(a)(1)(A)–(C), redesignated par. (3) as (2), struck out ''detailed'' before ''description of the premises'', and struck out former par. (2) which read as follows: ''the authority conferred on the Attorney General by the President and the approval of the Attorney General to make the application;''.

Subsec. (a)(3). Pub. L. 110–261, § 107(a)(1)(B), (D), redesignated par. (4) as (3) and inserted ''or is about to be'' before ''owned'' in subpar. (C). Former par. (3) redesignated (2).

Subsec. (a)(4), (5). Pub. L. 110–261, § 107(a)(1)(B), redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4) redesignated (3).

Subsec. (a)(6). Pub. L. 110–261, § 107(a)(1)(B), (E), redesignated par. (7) as (6) and substituted ''Affairs,'' for ''Affairs or'' and ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—'' for ''Senate—'' in introductory provisions. Former par. (6) redesignated (5).

Subsec. (a)(7) to (9). Pub. L. 110–261, § 107(a)(1)(B), redesignated pars. (8) and (9) as (7) and (8), respectively. Former par. (7) redesignated (6).

Subsec. (d)(1)(A). Pub. L. 110–261, § 107(a)(2), substituted ''the Director of National Intelligence, or the Director of the Central Intelligence Agency'' for ''or the Director of National Intelligence''.

2004—Subsec. (d)(1)(A). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2001—Subsec. (a)(7)(B). Pub. L. 107–56 substituted ''a significant purpose'' for ''the purpose''.

2000—Subsec. (d). Pub. L. 106–567 added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 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.

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; Transition Provisions note under section 401 of this title.

OFFICIALS DESIGNATED TO MAKE CERTIFICATIONS

For provisions listing officials designated by President to make certifications required by subsec. (a)(7) of this section, see Ex. Ord. No. 12949, § 3, Feb. 9, 1995, 60 F.R. 8169, set out as a note under section 1822 of this 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)(3)[1] 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

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—

[1] See References in Text note below.

(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 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 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.

(6) The Attorney General shall assess compliance with the requirements of paragraph (5).

(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.

(Pub. L. 95–511, title III, §304, as added Pub. L. 103–359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3447; amended Pub. L. 106–567, title VI, §603(b), Dec. 27, 2000, 114 Stat. 2853; Pub. L. 107–56, title II, §207(a)(2), (b)(2), Oct. 26, 2001, 115 Stat. 282; Pub. L. 107–108, title III, §314(a)(4),

Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108–458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109–177, title I, §105(b), Mar. 9, 2006, 120 Stat. 195; Pub. L. 110–261, title I, §§107(b), (c)(1), 110(c)(3), July 10, 2008, 122 Stat. 2463, 2464, 2467.)

REFERENCES IN TEXT

Subsection (a)(3) of this section, referred to in subsec. (b), was redesignated subsection (a)(2) by Pub. L. 110–261, title I, §107(b)(1)(B), July 10, 2008, 122 Stat. 2463.

This chapter, referred to in subsec. (d)(2), was in the original ''this Act'', meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, as amended, 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

2008—Subsec. (a). Pub. L. 110–261, §107(b)(1), (c)(1), redesignated pars. (2) to (5) as (1) to (4), respectively, 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;''.

Subsec. (d)(2). Pub. L. 110–261, §110(c)(3), substituted ''paragraph (5), (6), or (7) of section 1801(a)'' for ''section 1801(a)(5) or (6)''.

Subsec. (e). Pub. L. 110–261, §107(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to the power of the Attorney General to authorize the emergency employment of a physical search and required an application be made to a judge within 72 hours after the authorization.

2006—Subsec. (d)(1)(B), (2). Pub. L. 109–177 substituted ''who is not a United States person'' for ''as defined in section 1801(b)(1)(A) of this title''.

2004—Subsec. (c)(2)(C). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2001—Subsec. (d)(1). Pub. L. 107–56, §207(a)(2), substituted ''90 days,'' for ''forty-five days,'' and inserted ''(A)'' after ''except that'' and '', and (B) an order under 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 may be for the period specified in the application or for 120 days, whichever is less'' before period at end.

Subsec. (d)(2). Pub. L. 107–56, §207(b)(2), inserted ''or against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title,'' after ''not a United States person,''.

Subsec. (e)(1)(A)(ii), (3)(C). Pub. L. 107–108 substituted ''72 hours'' for ''24 hours''.

2000—Subsecs. (b) to (f). Pub. L. 106–567 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 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.

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; Transition Provisions note under section 401 of this title.

§ 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 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 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)[1] 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.

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[1] See References in Text note below.

(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.

(Pub. L. 95–511, title III, § 305, as added Pub. L. 103–359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3449; amended Pub. L. 107–56, title V, § 504(b), Oct. 26, 2001, 115 Stat. 364; Pub. L. 107–296, title VIII, § 899, Nov. 25, 2002, 116 Stat. 2258; Pub. L. 110–261, title I, §§ 107(c)(2), 110(b)(2), July 10, 2008, 122 Stat. 2464, 2466.)

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.

Section 1824(d) of this title, referred to in subsec. (j)(1), was redesignated section 1824(e) of this title by Pub. L. 106–567, title VI, § 603(b)(1), Dec. 27, 2000, 114 Stat. 2853.

AMENDMENTS

2008—Subsec. (k)(1)(B). Pub. L. 110–261, § 110(b)(2), substituted ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction'' for ''sabotage or international terrorism''.

Subsec. (k)(2). Pub. L. 110–261, § 107(c)(2), substituted ''1823(a)(6)'' for ''1823(a)(7)''.

2002—Subsec. (k)(1). Pub. L. 107–296, in introductory provision, inserted ''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)'' after ''law enforcement officers''.

2001—Subsec. (k). Pub. L. 107–56 added subsec. (k).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment 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.

§ 1826. Congressional oversight

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. On a semiannual basis the Attorney General shall also provide to those committees and the Committee on the Judiciary of the House of Representatives a report setting forth with respect to the preceding six-month period—

(1) the total number of applications made for orders approving physical searches under this subchapter;

(2) the total number of such orders either granted, modified, or denied;

(3) the number of physical searches which involved searches of the residences, offices, or personal property of United States persons, and the number of occasions, if any, where the Attorney General provided notice pursuant to section 1825(b) of this title; and

(4) the total number of emergency physical searches authorized by the Attorney General under section 1824(e) of this title and the total number of subsequent orders approving or denying such physical searches.

(Pub. L. 95–511, title III, § 306, as added Pub. L. 103–359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3451; amended Pub. L. 109–177, title I, § 109(a), Mar. 9, 2006, 120 Stat. 204.)

AMENDMENTS

2006—Pub. L. 109–177, § 109(a)(1), (2), in introductory provisions, inserted '', and the Committee on the Judiciary of the Senate,'' after ''Select Committee on Intelligence of the Senate'' and substituted ''and the Committee on the Judiciary of the House of Representatives'' for ''and the Committees on the Judiciary of the House of Representatives and the Senate''.

Par. (4). Pub. L. 109–177, § 109(a)(3)–(5), added par. (4).

§ 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.

(Pub. L. 95–511, title III, § 307, as added Pub. L. 103–359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

§ 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;

(2) punitive damages; and

(3) reasonable attorney's fees and other investigative and litigation costs reasonably incurred.

(Pub. L. 95–511, title III, § 308, as added Pub. L. 103–359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

§ 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.

(Pub. L. 95–511, title III, § 309, as added Pub. L. 103–359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

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.

(Pub. L. 95–511, title IV, § 401, as added Pub. L. 105–272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2404.)

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;

(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

(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility

to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order;

(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)[1] 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;

(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.

(Pub. L. 95–511, title IV, § 402, as added Pub. L. 105–272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2405; amended Pub. L. 107–56, title II, § 214(a), Oct. 26, 2001, 115 Stat. 286; Pub. L. 107–108, title III, § 314(a)(5), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108–458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109–177, title I, §§ 105(c), 128(a), Mar. 9, 2006, 120 Stat. 195, 228.)

REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a)(1), is set out as a note under section 401 of this title.

Section 1805(b)(2)(C) of this title, referred to in subsec. (d)(2)(B)(ii)(II), was redesignated section 1805(c)(2)(C) of this title by Pub. L. 106–567, title VI, § 602(b)(1), Dec. 27, 2000, 114 Stat. 2851.

[1] See References in Text note below.

AMENDMENTS

2006—Subsec. (d)(2)(A). Pub. L. 109–177, §128(a)(1), inserted ''and'' at end of cl. (ii) and substituted semicolon for period at end of cl. (iii).

Subsec. (d)(2)(C). Pub. L. 109–177, §128(a)(2), (3), added subpar. (C).

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).

2004—Subsec. (d)(2)(B)(ii)(II). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2001—Subsec. (a)(1). Pub. L. 107–56, §214(a)(1), substituted ''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'' for ''for any investigation to gather foreign intelligence information or information concerning international terrorism''.

Subsec. (c)(1). Pub. L. 107–108, §314(a)(5)(A), inserted ''and'' after semicolon at end.

Subsec. (c)(2). Pub. L. 107–56, §214(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 foreign intelligence or international terrorism 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.''

Subsec. (d)(2)(A). Pub. L. 107–56, §214(a)(4), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''shall specify—

''(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 a communication instrument or device not covered by clause (ii)—

''(I) the identity, if known, of the person who owns or leases the instrument or device or in whose name the instrument or device is listed; and

''(II) the number of the instrument or device; and''.

Subsec. (f). Pub. L. 107–108, §314(a)(5)(B), substituted ''terms of an order issued'' for ''terms of a court''.

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; Transition Provisions note under section 401 of this title.

§ 1843. Authorization during emergencies

(a) Requirements for authorization

Notwithstanding any other provision of this subchapter, 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 if—

(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;

(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.

(Pub. L. 95–511, title IV, § 403, as added Pub. L. 105–272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2407; amended Pub. L. 107–56, title II, § 214(b), Oct. 26, 2001, 115 Stat. 287; Pub. L. 110–261, title I, § 108, July 10, 2008, 122 Stat. 2464.)

AMENDMENTS

2008—Subsecs. (a)(2), (c)(1)(C). Pub. L. 110–261 substituted ''7 days'' for ''48 hours''.

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 or 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''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set 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 of 2008 Amendment note under section 1801 of this title.

§ 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.

(Pub. L. 95–511, title IV, § 404, as added Pub. L. 105–272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2408.)

§ 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 or to discover, obtain, or suppress evidence or information obtained or derived from 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 aggrieved 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.

(Pub. L. 95–511, title IV, § 405, as added Pub. L. 105–272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2408.)

§ 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 under 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.

(Pub. L. 95–511, title IV, § 406, as added Pub. L. 105–272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2410; amended Pub. L. 109–177, title I, §§ 109(b), 128(b), Mar. 9, 2006, 120 Stat. 204, 229.)

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''.

Subsec. (b)(3). Pub. L. 109–177, § 109(b), added par. (3).

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 of 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 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 retention and dissemination by 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 requested, or as modified, approving the release of tangible things. Such order shall direct that minimization procedures adopted pursuant to subsection (g) be followed.

(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 order shall be made to the court of review established under section 1803(b) of this title, which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(4) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, 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.

(5) All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions thereof, which may include classified 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 reten-

tion and dissemination by the Federal Bureau of Investigation of any tangible things, or information therein, received by the Federal Bureau of Investigation in response to an order under this subchapter.

(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, §314(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, §1004(a), Dec. 19, 2009, 123 Stat. 3470.)

AMENDMENT OF SECTION

Pub. L. 109–177, title I, §102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111–118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470, provided that, effective Feb. 28, 2010, with certain exceptions, this section is amended to read as it read on Oct. 25, 2001:

§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

A prior section 1861, Pub. L. 95–511, title V, §501, as added Pub. L. 105–272, title VI, §602, Oct. 20, 1998, 112 Stat. 2410, defined terms used in this subchapter, prior to repeal by Pub. L. 107–56, title II, §215, Oct. 26, 2001, 115 Stat. 287. See Amendment of Section note above.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–177, §106(a)(1), substituted ''Subject to paragraph (3), the Director'' for ''The Director''.

Subsec. (a)(3). Pub. L. 109–177, §106(a)(2), added par. (3).

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.''

Subsec. (f). Pub. L. 109–178, § 3, amended subsec. (f) generally. Prior to amendment, subsec. (f) provided for judicial proceedings relating to challenging an order to produce tangible things.

Pub. L. 109–177, § 106(f)(2), added subsec. (f).

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, 2010, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Feb. 28, 2010, or with respect to any particular offense or potential offense that began or occurred before Feb. 28, 2010, see section 102(b) of Pub. L. 109–177, set out as a note under section 1805 of this title.

§ 1862. Congressional oversight

(a) On a[1] 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.

(Pub. L. 95–511, title V, § 502, as added Pub. L. 107–56, title II, § 215, Oct. 26, 2001, 115 Stat. 288; amended Pub. L. 107–108, title III, § 314(a)(7), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 109–177, title I, §§ 102(b)(1), 106(h), Mar. 9, 2006, 120 Stat. 195, 199; Pub. L. 111–118, div. B, § 1004(a), Dec. 19, 2009, 123 Stat. 3470.)

AMENDMENT OF SECTION

Pub. L. 109–177, title I, § 102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111–118, div. B, § 1004(a), Dec. 19, 2009, 123 Stat. 3470, provided that, effective Feb. 28, 2010, with certain exceptions, this section is amended to read as it read on Oct. 25, 2001:

§ 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 to gather foreign intelligence information or 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, or officer, employee, or agent thereof, shall disclose to any person (other than those officers, agents, or employees of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose information to the Federal Bu-

[1] So in original. Probably should be ''an''.

reau of Investigation under this section) that the Federal Bureau of Investigation has sought or obtained records pursuant to an order under this section.

PRIOR PROVISIONS

A prior section 1862, Pub. L. 95–511, title V, § 502, as added Pub. L. 105–272, title VI, § 602, Oct. 20, 1998, 112 Stat. 2411, related to access to certain business records for foreign intelligence and international terrorism investigations, prior to repeal by Pub. L. 107–56, title II, § 215, Oct. 26, 2001, 115 Stat. 287. See section 1861 of this title and see Amendment of Section note above.

AMENDMENTS

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 semiannual 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''.

Subsec. (b)(3). Pub. L. 109–177, § 106(h)(2)(B)–(D), added par. (3).

Subsec. (c). Pub. L. 109–177, § 106(h)(3), added subsec. (c).

2001—Subsecs. (a), (b)(1). Pub. L. 107–108 substituted ''section 1861 of this title'' for ''section 1842 of this title''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109–177 effective Feb. 28, 2010, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Feb. 28, 2010, or with respect to any particular offense or potential offense that began or occurred before Feb. 28, 2010, see section 102(b) of Pub. L. 109–177, set out as a note under section 1805 of this title.

§ 1863. Repealed. Pub. L. 107–56, title II, § 215, Oct. 26, 2001, 115 Stat. 287

Section, Pub. L. 95–511, title V, § 503, as added Pub. L. 105–272, title VI, § 602, Oct. 20, 1998, 112 Stat. 2412, related to congressional oversight. See section 1862 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 1805 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.

(Pub. L. 95–511, title VI, § 601, as added Pub. L. 108–458, title VI, § 6002(a)(2), Dec. 17, 2004, 118 Stat. 3743; amended Pub. L. 110–261, title I, §§ 101(c)(2), 103, title IV, § 403(b)(2)(B), July 10, 2008, 122 Stat. 2459, 2460, 2474.)

AMENDMENT OF SUBSECTION (a)(1)

Pub. L. 110–261, title IV, § 403(b)(2), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, subsection (a)(1) of this section is amended to read as it read on the day before July 10, 2008.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (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

2008—Subsec. (a)(1)(E), (F). Pub. L. 110–261, § 101(c)(2), added subpars. (E) and (F).

Subsec. (a)(5). Pub. L. 110–261, § 103(a), substituted '', orders,'' for ''(not including orders)''.

Subsecs. (c), (d). Pub. L. 110–261, § 103(b), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 110–261, § 103(c), added subsec. (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–261, title IV, § 403(b)(2), July 10, 2008, 122 Stat. 2474, provided that except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the amendments made by section 403(b)(2) are effective Dec. 31, 2012.

SUBCHAPTER VI—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

§ 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.

(Pub. L. 95–511, title VII, § 701, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2437.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

PRIOR PROVISIONS

A prior section 701 of Pub. L. 95–511 was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110–261.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 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 (i)(3) 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 implementation of an authorization under subsection (a), intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance of an order pursuant to subsection (i)(3) prior to the implementation of such authorization.

(3) Timing of determination

The Attorney General and the Director of National Intelligence may make the determination under paragraph (2)—

(A) before the submission of a certification in accordance with subsection (g); or

(B) by amending a certification pursuant to subsection (i)(1)(C) at any time during which judicial review under subsection (i) of such certification is pending.

(4) Construction

Nothing in subchapter I shall be construed to require an application for a court order under such subchapter for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

(d) Targeting procedures

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to—

(A) ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(B) 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.

(2) Judicial review

The procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (i).

(e) Minimization procedures

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures that meet the definition of minimization procedures under section 1801(h) of this title or section 1821(4) of this title, as appropriate, for acquisitions authorized under subsection (a).

(2) Judicial review

The minimization procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (i).

(f) Guidelines for compliance with limitations

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt guidelines to ensure—

(A) compliance with the limitations in subsection (b); and

(B) that an application for a court order is filed as required by this chapter.

(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 sup-

porting 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) or 1821(4) 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 subsection (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 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 making a determination under this subparagraph or promptly thereafter, the judge shall provide a written statement for the record of the reasons for such determination.

(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 procedures pending the Court's review of such amended certification or amended procedures.

(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 issue 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, notwithstanding the expiration provided for in subsection (a), until the Court issues an order with respect to such certification under paragraph (3) at which time the provisions of that paragraph and paragraph (4) shall apply with respect to such certification.

(j) Judicial proceedings

(1) Expedited judicial proceedings

Judicial proceedings under this section shall be conducted as expeditiously as possible.

(2) Time limits

A time limit for a judicial decision in this section shall apply unless the Court, the Court of Review, or any judge of either the Court or the Court of Review, by order for reasons stated, extends that time as necessary for good cause in a manner consistent with national security.

(k) Maintenance and security of records and proceedings

(1) Standards

The Foreign Intelligence Surveillance Court shall maintain a record of a proceeding under this section, including petitions, appeals, orders, and statements of reasons for a decision, under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

(2) Filing and review

All petitions under this section shall be filed under seal. In any proceedings under this section, the Court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

(3) Retention of records

The Attorney General and the Director of National Intelligence shall retain a directive or an order issued under this section for a period of not less than 10 years from the date on which such directive or such order is issued.

***(l)* Assessments and reviews**

(1) Semiannual assessment

Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f) and shall submit each assessment to—

(A) the Foreign Intelligence Surveillance Court; and

(B) 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.

(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 re-

sponse 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) 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 subparagraph (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.

(Pub. L. 95–511, title VII, §702, as added Pub. L. 110–261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2438.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (f)(1)(B) and (g)(2)(A)(iii), 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. (*l*), 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

Pub. L. 110–261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 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—

(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, facilities, 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.

(Pub. L. 95–511, title VII, § 703, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2448.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

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 under section 1801 of this title and Tables.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 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 determina-

tion. The Government may appeal an order under this subparagraph pursuant to subsection (e).

(D) Scope of review of certification

If the judge determines that an application under subsection (b) does not contain all the required elements, or that the certification provided under subsection (b)(5) is clearly erroneous on the basis of the information furnished under subsection (b), 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).

(4) Duration

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.

(Pub. L. 95–511, title VII, § 704, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2453.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

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. 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.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section

404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 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 1824 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.

(Pub. L. 95–511, title VII, § 705, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2457.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 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.

(Pub. L. 95–511, title VII, § 706, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2457.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 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.

(Pub. L. 95–511, title VII, § 707, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2457.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

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 public law. The Resolution, which established the Senate Select Committee on Intelligence, is not classified to the Code.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 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.

(Pub. L. 95–511, title VII, § 708, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2458.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

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 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;

(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)(ii)(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 1881a(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.

(Pub. L. 95–511, title VIII, § 801, as added Pub. L. 110–261, title II, § 201, July 10, 2008, 122 Stat. 2467.)

REFERENCES IN TEXT

Section 1805b of this title, referred to in par. (8)(B)(iii), was repealed by Pub. L. 110–261, title IV, § 403(a)(1)(A), July 10, 2008, 122 Stat. 2473.

§ 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 2511(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 1881a(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 in-

formation 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.

(Pub. L. 95–511, title VIII, § 802, as added Pub. L. 110–261, title II, § 201, July 10, 2008, 122 Stat. 2468.)

REFERENCES IN TEXT

Section 1805b of this title, referred to in subsec. (a)(3), was repealed by Pub. L. 110–261, title IV, § 403(a)(1)(A), July 10, 2008, 122 Stat. 2473.

§ 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;

(2) require through regulation or any other means the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community;

(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

(b) Suits by the United States

The United States may bring suit to enforce the provisions of this section.

(c) Jurisdiction

The district courts of the United States shall have jurisdiction over any civil action brought by the United States to enforce the provisions of this section.

(d) Application

This section shall apply to any investigation, action, or proceeding that is pending on or commenced after July 10, 2008.

(Pub. L. 95–511, title VIII, § 803, as added Pub. L. 110–261, title II, § 201, July 10, 2008, 122 Stat. 2470.)

§ 1885c. Reporting

(a) Semiannual report

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 subchapter.

(b) Content

Each report made under subsection (a) shall include—

(1) any certifications made under section 1885a of this title;

(2) a description of the judicial review of the certifications made under section 1885a of this title; and

(3) any actions taken to enforce the provisions of section 1885b of this title.

(Pub. L. 95–511, title VIII, § 804, as added Pub. L. 110–261, title II, § 201, July 10, 2008, 122 Stat. 2470.)

CHAPTER 37—NATIONAL SECURITY SCHOLARSHIPS, FELLOWSHIPS, AND GRANTS

Sec.
1901. Short title, findings, and purposes.
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§ 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.

(Pub. L. 102–183, title VIII, § 801, Dec. 4, 1991, 105 Stat. 1271; Pub. L. 102–496, title IV, § 404(a), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 105–272, title III, § 305(a)(1), Oct. 20, 1998, 112 Stat. 2400.)

AMENDMENTS

1998—Subsecs. (b)(7), (c)(2). Pub. L. 105–272 inserted ''counterproliferation studies,'' after ''area studies,''.

1992—Subsec. (a). Pub. L. 102–496 amended subsec. (a) generally, inserting ''David L. Boren''.

§ 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 to enable such students to pursue education as part of a graduate degree program of a United States institution of higher education in the disciplines of foreign languages, area studies, counterproliferation studies, and other international fields relating to the national security interests of the United States that are critical areas of those disciplines (as determined under section 1903(d)(4)(B) of this title) and in which deficiencies exist (as identified in the assessments undertaken pursuant to section 1906(d) of this title); and

(ii) pursuant to subsection (b)(2)(B) of this section, enter into an agreement to work in a national security position or work in the field of education in the area of study for which the fellowship was awarded;

(C) awarding grants to institutions of higher education to enable such institutions to establish, operate, or improve programs in foreign languages, area studies, counterproliferation studies, and other international fields that are critical areas of those disciplines (as determined under section 1903(d)(4)(C) of this title);

(D) awarding grants to institutions of higher education to carry out activities under the National Flagship Language Initiative (described in subsection (i) of this section); and

(E) awarding scholarships to 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) 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) ⅓ of such amount for the awarding of scholarships pursuant to paragraph (1)(A);

(B) ⅓ of such amount for the awarding of fellowships pursuant to paragraph (1)(B); and

(C) ⅓ 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 5 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 not 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 Secretary of Defense, in coordination with 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 of Defense that no position is available in the departments, agencies, and offices covered by clauses (i) and (ii); or

(B) will (in accordance with such regulations) begin work not later than two years after the recipient's completion or termination of study for which fellowship assistance was provided under the program—

(i) for not less than one year in a position certified by the Secretary of Defense, in coordination with 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 of Defense 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 engaged 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 service agreement of the person under subsection (b) shall terminate.

(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 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 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 dis-

ciplines 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 in 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).

(6)(A) 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 unserved portion of such period of service bears to the total period of service required by clause (ii).

(C)[1] Subject to subparagraph (D), the obligation to reimburse 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) 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.

(Pub. L. 102–183, title VIII, § 802, Dec. 4, 1991, 105 Stat. 1271; Pub. L. 102–496, title IV, § 404(b), (c), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 103–178, title III, § 311(b)(2), (d), Dec. 3, 1993, 107 Stat. 2037; Pub. L. 104–201, div. A, title X, § 1078(b)–(d), (f)(2), Sept. 23, 1996, 110 Stat. 2664–2666; Pub. L. 105–272, title III, § 305(a)(2), Oct. 20, 1998, 112 Stat. 2400; Pub. L. 107–296, title XIII, § 1332(b), Nov. 25, 2002, 116 Stat. 2300; Pub. L. 107–306, title III, §§ 332, 333(a)(1)–(3), Nov. 27, 2002, 116 Stat. 2395, 2396; Pub. L. 108–136, div. A, title IX, § 925(a), Nov. 24, 2003, 117 Stat. 1578; Pub. L. 108–487, title VI, §§ 601(b), 602(a)(1), 603(a)(1), (2), Dec. 23, 2004, 118 Stat. 3952–3954; Pub. L. 109–364, div. A, title IX, § 945(a), (b), Oct. 17, 2006, 120 Stat. 2367; Pub. L. 110–181, div. A, title IX, § 953, Jan. 28, 2008, 122 Stat. 292; Pub. L. 111–84, div. A, title XI, § 1101, Oct. 28, 2009, 123 Stat. 2484.)

AMENDMENTS

2009—Subsec. (k). Pub. L. 111–84 added subsec. (k).

2008—Subsec. (b)(2)(A)(iii). Pub. L. 110–181, § 953(1), added cl. (iii).

Subsec. (b)(2)(B)(iii). Pub. L. 110–181, § 953(2), added cl. (iii).

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

[1] So in original. No subpar. (B) has been enacted.

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.

2004—Subsec. (a)(1)(E). Pub. L. 108–487, §603(a)(1), added subpar. (E).

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 (i) 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 1910(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.

2002—Subsec. (a)(1)(D). Pub. L. 107–306, §333(a)(1), added subpar. (D).

Subsec. (a)(2). Pub. L. 107–306, §333(a)(3), inserted at end ''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. 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, work 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 clause (i); or''.

Subsec. (b)(2)(B)(ii). Pub. L. 107–296, §1332(b)(2), 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 upon the completion of the degree, work 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 fellowship was awarded, for a period specified by the Secretary, which period shall be established in accordance with clause (i); and''.

Subsec. (h). Pub. L. 107–306, §332, added subsec. (h).

Subsec. (i). Pub. L. 107–306, §333(a)(2), added subsec. (i).

1998—Subsec. (a)(1)(B)(i), (C), (4). Pub. L. 105–272, §305(a)(2)(A), inserted ''counterproliferation studies,'' after ''area studies,''.

Subsec. (b)(2)(A)(ii), (B)(ii). Pub. L. 105–272, §305(a)(2)(B), inserted ''counterproliferation study,'' after ''area study,''.

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 1903(d)(4)(A) of this title) 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. 104–201, §1078(b)(2)(A), inserted ''relating to the national security interests of the United States'' after ''international fields''.

Subsec. (a)(1)(B)(ii). Pub. L. 104–201, §1078(b)(2)(B), substituted ''subsection (b)(2)(B)'' for ''subsection (b)(2)'' and ''work in a national security position or work in'' for ''work for an agency or office of the Federal Government or in''.

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 no more than the same period for which scholarship assistance was provided and for the recipients of fellowships 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.

Subsec. (g). Pub. L. 104–201, §1078(f)(2), added subsec. (g).

1993—Subsec. (a)(1)(A). Pub. L. 103–178, §311(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, §311(b)(2)(B), inserted before semicolon at end ''and in which deficiencies exist (as identified in the assessments undertaken pursuant to section 1906(d) of this title)''.

1992—Subsec. (a)(1)(A). Pub. L. 102–496, §404(b)(1), inserted ''or equivalent term,'' after ''semester''.

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(i) [now 802(j)] of the David L. Boren National Security Act of 1991 [50 U.S.C. 1902(i), 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].''

Amendment by Pub. L. 108–487 effective Dec. 23, 2004, except as otherwise provided, see section 801 of Pub. L. 108–487, set out as a note under section 2656f of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title IX, § 925(b), Nov. 24, 2003, 117 Stat. 1578, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply 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. 3953, 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 under section 802(i) of the David L. Boren National Security Education Act of 1991 [50 U.S.C. 1902(i)] to 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 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. 3953, 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 countries 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 foreign 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 program required under this chapter.

(Pub. L. 102–183, title VIII, §803, Dec. 4, 1991, 105 Stat. 1273; Pub. L. 102–496, title IV, §404(d), Oct. 24, 1992, 106 Stat. 3186; Pub. L. 104–201, div. A, title X, §1078(e), Sept. 23, 1996, 110 Stat. 2666; Pub. L. 105–272, title III, §305(a)(3), (b), Oct. 20, 1998, 112 Stat. 2401; Pub. L. 105–277, div. G, title XIII, §1335(g), Oct. 21, 1998, 112 Stat. 2681–788; Pub. L. 107–306, title III, §333(a)(4), Nov. 27, 2002, 116 Stat. 2396; Pub. L. 108–487, title VI, §603(a)(3), Dec. 23, 2004, 118 Stat. 3954.)

AMENDMENTS

2004–Subsec. (d)(4)(E). Pub. L. 108–487 inserted ''and section 1902(a)(1)(E) of this title (relating to the scholarship program for advanced English language studies by heritage community citizens)'' before period.

2002—Subsec. (d)(4)(E). Pub. L. 107–306 added subpar. (E).

1998—Subsec. (b)(6). Pub. L. 105–277, §1335(g)(1), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''The Secretary of Energy.''

Pub. L. 105–272, §305(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The Director of the United States Information Agency.''

Subsec. (b)(7). Pub. L. 105–277, §1335(g)(1)(B), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (b)(8). Pub. L. 105–277, §1335(g)(1)(B), redesignated par. (8) as (7).

Pub. L. 105–272, §305(a)(3), substituted ''area, and counterproliferation'' for ''and area''.

Subsec. (c). Pub. L. 105–277, §1335(g)(2), substituted ''subsection (b)(6)'' for ''subsection (b)(7)''.

Subsec. (d)(4). Pub. L. 105–272, §305(a)(3), substituted ''area, and counterproliferation'' for ''and area'' in introductory provisions.

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)(1) of this title, make recommendations'' for ''Make recommendations''.

Subsec. (d)(4)(A). Pub. L. 104–201, §1078(e)(2)(B), substituted ''and countries which are of importance to the national security interests of the United States'' after ''are studying''.

Subsec. (d)(4)(B). Pub. L. 104–201, §1078(e)(2)(C), substituted ''relating to the national security interests of the United States'' after ''section 1902(a)(1)(B) of this title''.

Subsec. (d)(5) to (8). Pub. L. 104–201, §1078(e)(3), (4), added pars. (5) to (7) and redesignated former par. (5) as (8).

1992—Subsec. (b)(7). Pub. L. 102–496, §404(d)(2), added par. (7). Former par. (7) redesignated (8).

Subsec. (b)(8). 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 6531 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 ⅛ of 1 percent, the rate of interest of such special obligations shall be the multiple of ⅛ 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.

(Pub. L. 102–183, title VIII, § 804, Dec. 4, 1991, 105 Stat. 1274; Pub. L. 102–496, title IV, § 404(e), Oct. 24, 1992, 106 Stat. 3186; Pub. L. 103–160, div. A, title III, § 375, Nov. 30, 1993, 107 Stat. 1637.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–160, § 375(b), struck out ''(1)'' before ''Sums in the Fund'', redesignated former subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows: ''No amount may be appropriated to the Fund, or obligated from the Fund, unless authorized by law.''

Subsec. (e)(3). Pub. L. 103–160, § 375(a), added par. (3).

1992—Subsec. (c). Pub. L. 102–496 substituted ''expenditure'' for ''obligation'' in first sentence.

§ 1905. Regulations and administrative provisions

(a) Regulations

The Secretary may prescribe regulations to carry out the program required by this chapter. Before prescribing any such regulations, the Secretary shall submit a copy of the proposed regulations to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives. Such proposed regulations may not take effect until 30 days after the date on which they are submitted to those committees.

(b) Acceptance and use of gifts

In order to conduct the program required by this chapter, the Secretary may—

(1) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purpose of conducting the program required by this chapter; and

(2) may use, sell, or otherwise dispose of such property for that purpose.

(c) Voluntary services

In order to conduct the program required by this chapter, the Secretary may accept and use the services of voluntary and noncompensated personnel.

(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.

(Pub. L. 102–183, title VIII, § 805, Dec. 4, 1991, 105 Stat. 1275.)

§ 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.

(Pub. L. 102–183, title VIII, § 806, Dec. 4, 1991, 105 Stat. 1276; Pub. L. 103–178, title III, § 311(b)(1), Dec. 3, 1993, 107 Stat. 2037; Pub. L. 104–201, div. A, title X, § 1078(f)(3), Sept. 23, 1996, 110 Stat. 2667; Pub. L. 105–272, title III, § 305(a)(4), Oct. 20, 1998, 112 Stat. 2401; Pub. L. 107–306, title VIII, § 811(b)(7)(A), Nov. 27, 2002, 116 Stat. 2425.)

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).

1998—Subsec. (b)(1). Pub. L. 105–272 substituted ''area, and counterproliferation'' for ''and area''.

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).

1993—Subsec. (d). Pub. L. 103–178 added subsec. (d).

§ 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.

(Pub. L. 102–183, title VIII, § 807, Dec. 4, 1991, 105 Stat. 1276; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in section catchline and in two places in text.

§ 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 a[1] 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.

(Pub. L. 102–183, title VIII, § 808, Dec. 4, 1991, 105 Stat. 1276; Pub. L. 104–201, div. A, title X, § 1078(f)(1), Sept. 23, 1996, 110 Stat. 2666; Pub. L. 105–244, title I, § 102(a)(15), Oct. 7, 1998, 112 Stat. 1622; Pub. L. 107–306, title VIII, § 811(b)(7)(B), Nov. 27, 2002, 116 Stat. 2426.)

AMENDMENTS

2002—Par. (5). Pub. L. 107–306 added par. (5).

1998—Par. (3). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)''.

1996—Par. (4). Pub. L. 104–201 added par. (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

[1] So in original. Probably should be ''an''.

§ 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.

(Pub. L. 102–183, title VIII, § 809, Dec. 4, 1991, 105 Stat. 1277.)

§ 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, 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.

(Pub. L. 102–183, title VIII, § 810, as added Pub. L. 103–178, title III, § 311(c), Dec. 3, 1993, 107 Stat. 2037; amended Pub. L. 108–487, title VI, § 601(a), Dec. 23, 2004, 118 Stat. 3951.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–487 added subsec. (c).

§ 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.

(Pub. L. 102–183, title VIII, § 811, as added Pub. L. 107–306, title III, § 333(b), Nov. 27, 2002, 116 Stat. 2397; amended Pub. L. 108–487, title VI, § 602(b), Dec. 23, 2004, 118 Stat. 3953.)

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.

(Pub. L. 102–183, title VIII, § 812, as added Pub. L. 108–487, title VI, § 603(b), Dec. 23, 2004, 118 Stat. 3954.)

CHAPTER 38—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY

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CODIFICATION

The Central Intelligence Agency Retirement Act, comprising this chapter, was originally enacted as the Central Intelligence Agency Retirement Act of 1964 for Certain Employees by Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, as amended by Pub. L. 90–539, Sept. 30, 1968, 82 Stat. 902; Pub. L. 91–185, Dec. 30, 1969, 83 Stat. 847; Pub. L. 91–626, §§1–6, Dec. 31, 1970, 84 Stat. 1872–1874; Pub. L. 93–31, May 8, 1973, 87 Stat. 65; Pub. L. 93–210, §1(a), Dec. 28, 1973, 87 Stat. 908; Pub. L. 94–361, title VIII, §801(b), July 14, 1976, 90 Stat. 929; Pub. L. 94–522, title I, §§101, 102, title II, §§201–213, Oct. 17, 1976, 90 Stat. 2467–2471; Ex. Ord. No. 12273, Jan. 16, 1981, 46 F.R. 5854; Ex. Ord. No. 12326, Sept. 30, 1981, 46 F.R. 48889; Pub. L. 97–269, title VI, §§602–611, Sept. 27, 1982, 96 Stat. 1145–1148, 1152–1153; Ex. Ord. No. 12443, Sept. 27, 1983, 48 F.R. 44751; Ex. Ord. No. 12485, July 13, 1984, 49 F.R. 28827; Pub. L. 98–618, title III, §302, Nov. 8, 1984, 98 Stat. 3300; Pub. L. 99–169, title VII, §702, Dec. 4, 1985, 99 Stat. 1008; Pub. L. 99–335, title V, §§501–506, June 6, 1986, 100 Stat. 622–624; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–569, title III, §302(a), Oct. 27, 1986, 100 Stat. 3192; Pub. L. 100–178, title IV, §§401(a), 402(a), (b)(1), (2), Dec. 2, 1987, 101 Stat. 1012–1014; Pub. L. 100–453, title III, §302(a), (b)(1), (c)(1), (d)(1), (2), title V, §502, Sept. 29, 1988, 102 Stat. 1906, 1907, 1909; Pub. L. 101–193, title III, §§302–304(a), 307(b), Nov. 30, 1989, 103 Stat. 1703, 1707; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–88, title III, §§302–305(a), 306–307(b), Aug. 14, 1991, 105 Stat. 431–433; Pub. L. 102–183, title III, §§302(a)–(c), 303(a), 304–306(b), 307, 309(a), 310(a), Dec. 4, 1991, 105 Stat. 1262–1266; Pub. L. 102–496, title III, §304(b), Oct. 24, 1992, 106 Stat. 3183, and was set out as a note under section 403 of this title. The Act is shown herein, however, as having been added by Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, without reference to such intervening amendments because of the extensive revision and restatement of the Act's provisions by Pub. L. 102–496.

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 unrefunded 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.

(Pub. L. 88–643, title I, § 101, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3197; amended Pub. L. 103–178, title II, § 202(a)(1), Dec. 3, 1993, 107 Stat. 2025; Pub. L. 108–458, title I, § 1071(c), Dec. 17, 2004, 118 Stat. 3691.)

PRIOR PROVISIONS

A prior section 101 of Pub. L. 88–643, title I, Oct. 13, 1964, 78 Stat. 1043, provided a short title for Pub. L. 88–643 as the ''Central Intelligence Agency Retirement Act of 1964 for Certain Employees'' and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

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.''

1993—Par. (7). Pub. L. 103–178 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 2082(h) 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.

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; Transition Provisions 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 subsection (a) [amending this section and sections 2011, 2021, 2031, 2032, 2034, 2035, 2051, 2052, 2054, 2071, 2094, 2095, 2131, and 2154 of this title] shall take effect as of February 1, 1993.''

EFFECTIVE DATE

Section 805 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 402 of this title] shall take effect on 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 232(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 annuities payable to children by reason of the death of a participant or annuitant on or after that date.''

Pub. L. 102–183, title III, § 303(b), Dec. 4, 1991, 105 Stat. 1264, provided that: ''(1) The amendments made by subsection (a) [amending section 221(p)–(r) 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].

''(2)(A) The amendment made by subsection (a)(2) [enacting 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), except that paragraph (1)(A) 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.

''(B) 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); 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 subparagraph (B)(ii) of such paragraph (relating to interest).''

Pub. L. 102–183, title III, § 306(c), Dec. 4, 1991, 105 Stat. 1265, provided that:

''(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, 1988.''

Pub. L. 102–183, title III, § 309(b), Dec. 4, 1991, 105 Stat. 1266, provided that: ''Subsection (h) of section 304 of the

Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88–643], as added by subsection (a), shall be deemed to have become effective as of December 2, 1987.''

Pub. L. 102–183, title III, § 310(b), Dec. 4, 1991, 105 Stat. 1267, provided that: ''The amendment made by subsection (a) [amending section 204(b)(4) of Pub. L. 88–643] shall apply only to a former husband or wife of a participant or former participant whose divorce from the participant or former participant becomes final after the date of the enactment of this Act [Dec. 4, 1991].''

Pub. L. 102–88, title III, § 305(b), Aug. 14, 1991, 105 Stat. 432, provided that:

''(1) The amendments made by subsection (a) [amending sections 221, 222, and 232 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 enactment of this Act [Aug. 14, 1991].''

Amendment by section 307 of Pub. L. 102–88 (amending sections 224 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. 102–88, set out as an Effective Date of 1991 Amendment note under section 403p of this title.

Pub. L. 101–193, title III, § 304(b), Nov. 30, 1989, 103 Stat. 1703, provided that: ''The amendment made by this section [amending section 224(a)(2) of Pub. L. 88–643] shall be effective as of October 1, 1986.''

Pub. L. 100–453, title III, § 302(b)(2), Sept. 29, 1988, 102 Stat. 1907, provided that: ''The amendments made by paragraph (1) [amending section 224 of Pub. L. 88–643] shall take effect as of October 1, 1986.''

Pub. L. 100–453, title III, § 302(c)(2), Sept. 29, 1988, 102 Stat. 1907, provided that: ''The amendment made by paragraph (1) [amending section 225(a) of Pub. L. 88–643] shall take effect as of December 2, 1987.''

Pub. L. 100–453, title III, § 302(d)(3), Sept. 29, 1988, 102 Stat. 1907, provided that: ''The amendment made by this subsection [amending section 221(n), (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. 1014, 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(*o*)(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.

''(2) The amendment made by subsection (b)(2) [amending section 304 of Pub. L. 88–643] shall take effect on January 1, 1987, the effective date of the Federal Employees' Retirement System Act of 1986.

''(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 232 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]''.

Amendment by section 302(a) of Pub. L. 99–569 (enacting section 224 of Pub. L. 88–643) effective Oct. 1, 1986, see section 302(d) of Pub. L. 99–569, set out as an Effective Date of 1986 Amendment note under section 403n of this title.

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 section 221(b) (as amended by this title) and the provisions of subsections (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.''

Pub. L. 94–522, title II, § 215, Oct. 17, 1976, 90 Stat. 2472, provided that:

''(a) This Act [amending Pub. L. 88–643] shall become effective October 1, 1976.

''(b) The amendments made by sections 201(a), (b), (c), and (d), 202, and 208 [amending sections 204(a), (b)(2), (3)(i), 221(b) and 232(b) of Pub. L. 88–643] shall not apply in the case of participants who died before January 8, 1971. The amendments made by section 201(e) [amending section 204 of Pub. L. 88–643] shall not apply in the case of participants who died before April 9, 1974. 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.

''(c) The amendment made by section 203 [enacting section 221(f)(2) of Pub. L. 88–643] shall apply to a participant who married prior to enactment [Oct. 17, 1976] but only if the election is made within one year after enactment [Oct. 17, 1976].

''(d) The amendment made by section 210 [amending section 251 of Pub. L. 88–643] is effective only with respect to annuity accruing for full months beginning after January 8, 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 81 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 retired before such date of enactment, any such part of a period of separation shall be counted only upon application of the retired person.

''(e) The amendment in section 211 [amending section 252(a)(2) of Pub. L. 88–643] to credit certain service in the Public Health Service is effective as of April 8, 1960, and the amendment to credit certain service in the National Oceanic and Atmospheric Administration is effective as of September 14, 1961.

''(f) The amendment in section 212 [enacting section 264 of Pub. L. 88–643] is effective as of June 30, 1974.

''(g) The amendment to recompute a reduced annuity during periods when not married in section 202 [amending section 221(b) of Pub. L. 88–643] shall apply to annuities which commence before, on, or after the date of enactment of this Act [Oct. 17, 1976], but no increase in annuity shall be paid for any period prior to November 1, 1974.

''(h) Annuity increases under sections 204 [enacting section 221(*l*) of Pub. L. 88–643] and 214 [set out below] shall apply to annuities which commence before, on, or after the date of enactment of this Act [Oct. 17, 1976], but no increase in annuity shall be paid for any period prior to August 1, 1974, or the date on which the annuity commences, whichever is later.''

Pub. L. 93–210, § 1(b), Dec. 28, 1973, 87 Stat. 908, provided that: ''The amendments made by subsection (a) [amending section 291(b) of Pub. L. 88–643] shall apply only with respect to annuities which commence on or after July 2, 1973.''

Pub. L. 91–185, § 6, Dec. 30, 1969, 83 Stat. 849, provided that:

''(a) The amendments made by section 1 [amending section 211(a) of Pub. L. 88–643, set out above] shall become effective at the beginning of the first applicable pay period beginning after December 31, 1969.

''(b) The amendments made by sections 3, 4 [amending sections 231(a) and 232(h) of Pub. L. 88–643], and 2 [amending section 221 of Pub. L. 88–643], with the exception of 2(c) [amending subsec. (c) thereof], shall become effective October 20, 1969.

''(c) The amendments made by sections 2(c) and 5 [amending sections 221(c) and 291 of Pub. L. 88–643] shall become effective November 1, 1969.

''(d) The amendments made by sections 2(a), 2(e), 3, and 4(a)(1)–(2) [amending section 221(a), adding section 221(h), and amending sections 231(a) and 232(b) of Pub. L. 88–643] shall not apply in the cases of persons retired or otherwise separated prior to October 20, 1969, and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such sections had not been enacted.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–36, § 1, June 8, 1993, 107 Stat. 104, provided that: ''This Act [amending section 2053 of this title and enacting provisions set out as a note under section 403–4 of this title] may be cited as the 'Central Intelligence Agency Voluntary Separation Pay Act'.''

SHORT TITLE OF 1992 AMENDMENT

Section 801 of title VIII of Pub. L. 102–496 provided that: ''This title [enacting this chapter, amending sections 403n, 403r, 403r–1, and 403s of this title, sections 8347 and 8423 of Title 5, Government Organization and Employees, section 1605 of Title 10, Armed Forces and sections 4071b to 4071d of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 402 of this title] may be cited as the 'CIARDS Technical Corrections Act of 1992'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–269, title VI, § 601, Sept. 27, 1982, 96 Stat. 1145, provided that: ''This title [enacting section 403n of this title and amending Pub. L. 88–643] may be cited as the 'Central Intelligence Agency Spouses' Retirement Equity Act of 1982'.''

SHORT TITLE

Section 1(a) of Pub. L. 88–643, as added by Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196, 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 Act of 1964 for Certain Employees, or to a provision of that Act, shall be deemed to refer to that Act and to the corresponding provision of that Act, as restated by section 802 as the Central Intelligence Agency Retirement Act.''

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 to sections 224 and 225 of Pub. L. 88–643 by section 307 of Pub. L. 102–88 be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts, see section 307(c) of Pub. L. 102–88, set out as a Compliance With Budget Act note under section 403p of this title.

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY FUND; ANNUITY INCREASE PAYMENT; MONTHLY RATE

Pub. L. 94–522, title II, § 214, Oct. 17, 1976, 90 Stat. 2472, provided that:

''(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. 1043; 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 1401a of Title 10, Armed Forces.

EXECUTIVE ORDER NO. 11950

Ex. Ord. No. 11950, Jan. 6, 1977, 42 F.R. 1451, conformed Central Intelligence Agency and Civil Service Retire-

ment and Disability Systems with respect to cost of living increases in annuities when there were increases in the price index.

EXECUTIVE ORDER NO. 12023

Ex. Ord. No. 12023, Dec. 1, 1977, 42 F.R. 61443, conformed 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, conformed 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. 78995, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to definition of ''dependent''.

EXECUTIVE ORDER NO. 12273

Ex. Ord. No. 12273, Jan. 16, 1981, 46 F.R. 5854, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to cost-of-living increases to annuities.

EXECUTIVE ORDER NO. 12326

Ex. Ord. No. 12326, Sept. 30, 1981, 46 F.R. 48889, as amended by Ex. Ord. No. 12443, Sept. 27, 1983, 48 F.R. 44751, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to notification of loss or reduction of survivor benefits, computation of annuities, cost-of-living increases, accuracy of information, and withholding of State income tax.

EXECUTIVE ORDER NO. 12443

Ex. Ord. No. 12443, Sept. 27, 1983, 48 F.R. 44751, conformed 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, conformed Central Intelligence Agency Retirement and Disability System and Civil Service Retirement and Disability System with regard to prior service credit.

EXECUTIVE ORDER NO. 12684

Ex. Ord. No. 12684, July 27, 1989, 54 F.R. 31643, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to considering part-time service in computing annuities and remarriage of surviving spouses.

§ 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) while an employee of the Agency 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) while an employee of the Agency 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 surviving wife or husband of a participant or retired participant who (i) was married to the participant or retired participant for 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.

(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 death of the participant or retired participant shall be treated as having been met if—

(i) the death of the participant or retired participant was accidental; or

(ii) the surviving wife or husband had been previously married to the participant or retired participant (and subsequently divorced) and the aggregate time married is at least 9 months.

(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 became 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 cred-

itable 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 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.

(Pub. L. 88–643, title I, §102, as added Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3198.)

PRIOR PROVISIONS

A prior section 111 of Pub. L. 88–643, title I, Oct. 13, 1964, 78 Stat. 1043; Pub. L. 94–522, title I, §101, Oct. 17, 1976, 90 Stat. 2467, provided definitions for Pub. L. 88–643 and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

SUBCHAPTER II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

PART A—ESTABLISHMENT OF SYSTEM

§ 2011. CIARDS system

(a) In general

(1) Establishment of system

There is a retirement and disability system for certain employees of the Central Intelligence Agency known as the Central Intelligence Agency Retirement and Disability

System (hereinafter in this chapter referred to as the ''system''), originally established pursuant to title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

(2) DCI regulations

The Director shall prescribe regulations for the system. The Director shall submit any proposed regulations for the system to the congressional intelligence committees not less than 14 days before they take effect.

(b) Administration of system

The Director shall administer the system in accordance with regulations prescribed under this subchapter and with the principles established by this subchapter.

(c) Finality of decisions of DCI

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, and notwithstanding the provisions of chapter 7 of title 5 or any other provision of law (except section 2155(b) of this title), any determination by the Director authorized by this chapter shall be final and conclusive and shall not be subject to review by any court.

(Pub. L. 88–643, title II, §201, as added Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3201; amended Pub. L. 103–178, title II, §202(a)(2), Dec. 3, 1993, 107 Stat. 2026; Pub. L. 105–272, title IV, §403(b), Oct. 20, 1998, 112 Stat. 2404; Pub. L. 108–458, title I, §1072(c), Dec. 17, 2004, 118 Stat. 3693.)

REFERENCES IN TEXT

The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in subsec. (a)(1), is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, as amended, which was formerly set out as a note under section 403 of this title. Pub. L. 88–643 was revised generally by Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 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

A prior section 201 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1043; Pub. L. 98–618, title III, §302, Nov. 8, 1984, 98 Stat. 3300; Pub. L. 99–335, title V, §501(1), June 6, 1986, 100 Stat. 622, related to rules and regulations and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–458 substituted ''section 403–1(i) of this title that the Director of National Intelligence'' for ''paragraph (6) of section 403–3(c) of this title that the Director of Central Intelligence''.

1998—Subsec. (c). Pub. L. 105–272 substituted ''paragraph (6) of section 403–3(c) of this title'' for ''section 403–3(c)(5) of this title''.

1993—Subsec. (c). Pub. L. 103–178 substituted ''section 403–3(c)(5) of this title'' for ''the proviso of section 403(d)(3) 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.

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; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

§ 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

The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in text, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, as amended, which was formerly set out as a note under section 403 of this title. Pub. L. 88–643 was revised generally by Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 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

A prior section 202 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1043, related to establishment and maintenance of the Central Intelligence Agency Retirement and Disability Fund and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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 sys-

tem 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.

(Pub. L. 88–643, title II, § 203, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3202.)

PRIOR PROVISIONS

A prior section 203 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1044; Pub. L. 102–88, title III, § 303, Aug. 14, 1991, 105 Stat. 431, related to participants in the system and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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.

(Pub. L. 88–643, title II, § 204, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3202.)

PRIOR PROVISIONS

A prior section 204 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1044; Pub. L. 91–626, § 1, Dec. 31, 1970, 84 Stat. 1872; Pub. L. 94–552, title II, § 201, Oct. 17, 1976, 90 Stat. 2468; Pub. L. 97–269, title VI, § 602, Sept. 27, 1982, 96 Stat. 1145; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102–88, title III, § 302, Aug. 14, 1991, 105 Stat. 431; Pub. L. 102–183, title III, §§ 302(c), 310(a), Dec. 4, 1991, 105 Stat. 1263, 1266, related to annuitants under the system and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

PART B—CONTRIBUTIONS

§ 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, notwithstanding any law, rule, or regulation affecting the individual's pay.

(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[1] 2071(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.

[1] So in original. Probably should be "section".

(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 service—

(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.

(Pub. L. 88–643, title II, §211, as added Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3202; amended Pub. L. 103–178, title II, §202(a)(3), Dec. 3, 1993, 107 Stat. 2026.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to 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

A prior section 211 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1045; Pub. L. 91–185, §1, Dec. 30, 1969, 83 Stat. 847; Pub. L. 97–269, title VI, §611, Sept. 27, 1982, 96 Stat. 1153; Pub. L. 99–335, title V, §§501(2), 502, June 6, 1986, 100 Stat. 622, 623; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, related to compulsory contributions to the fund and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

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

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

TEMPORARY ADJUSTMENT OF CONTRIBUTION LEVELS

Pub. L. 106–346, §101(a) [title V, §505(g)], Oct. 23, 2000, 114 Stat. 1356, 1356A–54, 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, 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.''

Pub. L. 105–33, title VII, §7001(c)(1), (2), Aug. 5, 1997, 111 Stat. 658, as amended by Pub. L. 106–346, §101(a) [title V, §505(c)(1)], Oct. 23, 2000, 114 Stat. 1356, 1356A–53, provided that:

''(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, 2000, 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:

7.25	January 1, 1999, to December 31, 1999.
7.4	January 1, 2000, to December 31, 2000.''

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 be-

fore 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.

(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 2094(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 2½ 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)(5) 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 sub-

paragraph (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.

(c) 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.

(iii) $3,240, as adjusted under section 2131 of this title, divided by the number of children.

(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 (d) of this section, 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 subparagraph 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 ir-

revocably 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 immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 2032(b)(5) of this title or elected under subparagraph (B)).

(B) When annuity previously not (or not fully) reduced

(i) Election

If the retired participant's annuity was not reduced (or was not fully reduced) to provide a survivor annuity for the participant's spouse or former spouse as of the time of retirement, the retired participant may make an election under the first sentence of subparagraph (A) upon remarriage to a spouse other than the spouse at the time of retirement. For any remarriage that occurred before August 14, 1991, the retired participant may make such an election within 2 years after such date.

(ii) Deposit required

(I) The retired participant shall, within one year after the date of the remarriage (or by August 14, 1993 for any remarriage that occurred before August 14, 1991), deposit in the fund an amount determined by the Director, as nearly as may be administratively feasible, to reflect the amount by which the retired participant's annuity would have been reduced if the election had been in effect since the date the annuity commenced, plus interest.

(II) The annual rate of interest for each year during which the retired participant's annuity would have been reduced if the election had been in effect since the date the annuity commenced shall be 6 percent.

(III) If the retired participant does not make the deposit, the Director shall collect such amount by offset against the participant's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the retired participant, and the retired participant is deemed to consent to such offset.

(IV) The deposit required by this subparagraph may be made by the surviving spouse of the retired participant.

(C) Effects of election

An election under this paragraph and the reduction in the participant's annuity shall be effective on the first day of the month beginning 9 months after the date of remarriage. A survivor annuity elected under this paragraph shall be treated in all respects as a survivor annuity under subsection (b) of this section.

(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 the system 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 8349 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.

***(l)* 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.

(Pub. L. 88–643, title II, § 221, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3204; amended Pub. L. 103–178, title II, § 202(a)(4), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 221 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1045; Pub. L. 91–185, § 2, Dec. 30, 1969, 83 Stat. 847; Pub. L. 91–626, §§ 2, 3, Dec. 31, 1970, 84 Stat. 1872; Pub. L. 94–522, title II, §§ 202–204, Oct. 17, 1976, 90 Stat. 2468, 2469; Ex. Ord. No. 12326, §§ 1, 3, 6, Sept. 30, 1981, 46 F.R. 48889, 48890; Pub. L. 97–269, title VI, §§ 603–605, 610, Sept. 27, 1982, 96 Stat. 1146, 1147, 1153; Ex. Ord. No. 12443, §§ 4, 7, 8, Sept. 27, 1983, 48 F.R. 44752; Pub. L. 99–335, title V, §§ 501(2), (3), 503, June 6, 1986, 100 Stat. 622, 623; Pub. L. 100–178, title IV, § 402(b)(1), Dec. 2, 1987, 101 Stat. 1014; Pub. L. 100–453, title III, § 302(d)(1), (2), Sept. 29, 1988, 102 Stat. 1907; Pub. L. 102–88, title III, §§ 304(a), 305(a)(1), 306, Aug. 14, 1991, 105 Stat. 431, 432; Pub. L. 102–183, title III, §§ 302(a), 303(a), Dec. 4, 1991, 105 Stat. 1262, 1263, related to computation of annuities for other than former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

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 (2))'' after ''individual shall be reduced''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

§ 2032. Annuities for former spouses

(a) Former spouse share of participant's annuity

(1) Pro rata share

Unless otherwise expressly provided by a spousal agreement or court order under section 2094(b) of this title, a former spouse of a participant, former participant, or retired participant is entitled to an annuity—

(A) if married to the participant, former participant, or retired participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant throughout such creditable service, equal to that proportion of 50 percent 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 is not qualified for an annuity under this subsection if before the com-

mencement of that annuity the former spouse remarries before becoming 55 years of age.

(3) Commencement of annuity

The annuity of a former spouse under this subsection commences on the day the participant upon whose service the annuity is based becomes entitled to an annuity under this subchapter or on the first day of the month after the divorce or annulment involved becomes final, whichever is later.

(4) Termination of annuity

The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the month in which the former spouse dies or remarries before 55 years of age; or

(B) the date on which the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(5) Treatment of participant's annuity

(A) Reduction in participant's annuity

The annuity payable to any participant shall be reduced by the amount of an annuity under this subsection paid to any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse, or other survivor under this subchapter; and

(ii) any reduction in the annuity of the participant to provide survivor benefits under subsection (b) of this section or under section 2031(b) of this title.

(B) Treatment when annuitant returns to service

If an annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 2111 of this title, or reinstated or reappointed, in the case of a recovered 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 for any one surviving spouse or former spouse of such participant under this section or section 2031 of this title, may exceed 55 percent of the unreduced amount of the participant's annuity, as computed under section 2031(a) of this title.

(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.

(Pub. L. 88–643, title II, § 222, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3212; amended Pub. L. 103–178, title II, § 202(a)(5), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 222 of Pub. L. 88–643, as added Pub. L. 97–269, title VI, § 606, Sept. 27, 1982, 96 Stat. 1148; amended Pub. L. 99–335, title V, § 501(2), (3), June 6, 1986, 100 Stat. 622; Pub. L. 102–88, title III, § 305(a)(2), Aug. 14, 1991, 105 Stat. 432, related to computation of annuities for former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

1993—Subsec. (a)(7). Pub. L. 103–178, § 202(a)(5)(A), substituted ''any survivor annuity'' for ''any other annuity''.

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 ''before the spouse's or the former spouse's death'' for ''before the former spouse's death''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

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 the 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. 2013), 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 the participant's annuity, as computed under section 221(a) of such Act [50 U.S.C. 2031(a)]; or

''(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].

''(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].

''(2) LIMITATIONS.—A former wife or husband is not entitled 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. 102–496, 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 latest of—

''(I) the date on which the participant or retired participant to whom the former wife or husband was married dies;

''(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 FERS.—

''(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—

''(i) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

''(ii) if not 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 ANNUITIES.—

''(i) AMOUNT OF REDUCTION.—An annuity payable under this subsection shall be reduced by an amount equal to any apportionment payments 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) DEFINITION OF TERMS.—For purposes of clause (i):

''(I) APPORTIONMENT.—The term 'apportionment' 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.

''(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; 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. 102–496, 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 under such Act [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 so 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 transferred participant's annuity computed in accordance with section 302(a) of the Federal Employee's Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note].

''(6) SAVINGS PROVISION.—Nothing in this subsection shall be construed to impair, reduce, or otherwise affect 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 202 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 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 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 November 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 2031(b)(1)(B) 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.

(Pub. L. 88–643, title II, § 223, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3216.)

PRIOR PROVISIONS

A prior section 223 of Pub. L. 88–643, as added Pub. L. 97–269, title VI, § 607, Sept. 27, 1982, 96 Stat. 1151; amended Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622, related to election of survivor benefits for certain former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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 2031(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.

(Pub. L. 88–643, title II, § 224, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3217; amended Pub. L. 103–178, title II, § 202(a)(6), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 224 of Pub. L. 88–643, as added Pub. L. 99–569, title III, § 302(a), Oct. 27, 1986, 100 Stat. 3192; amended Pub. L. 100–453, title III, § 302(b)(1), Sept. 29, 1988, 102 Stat. 1907; Pub. L. 101–193, title III, § 304(a), Nov. 30, 1989, 103 Stat. 1703; Pub. L. 102–88, title III, § 307(a), Aug. 14, 1991, 105 Stat. 432; Pub. L. 102–183, title III, § 304, Dec. 4, 1991, 105 Stat. 1264, related to survivor annuities for certain other former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

1993—Subsec. (c)(1)(B)(i). Pub. L. 103–178 substituted ''retired participant'' for ''former participant''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

§ 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.

(Pub. L. 88–643, title II, §225, as added Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3218; amended Pub. L. 103–178, title II, §202(a)(7), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 225 of Pub. L. 88–643, as added Pub. L. 100–178, title IV, §401(a), Dec. 2, 1987, 101 Stat. 1012; amended Pub. L. 100–453, title III, §302(c)(1), Sept. 29, 1988, 102 Stat. 1907; Pub. L. 102–88, title III, §307(b), Aug. 14, 1991, 105 Stat. 433, related to retirement benefits for certain other former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

1993—Subsec. (c)(3). Pub. L. 103–178, §202(a)(7)(A), substituted ''any survivor annuity'' for ''any other annuity''.

Subsec. (c)(4)(A). Pub. L. 103–178, §202(a)(7)(B), substituted ''June 2, 1990'' for ''June 2, 1991''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

§ 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 and Disability System (CSRS) as prescribed by the Civil Service Retirement Spouse Equity Act of 1984.

(Pub. L. 88–643, title II, §226, as added Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3220.)

REFERENCES IN TEXT

The Civil Service Retirement Spouse Equity Act of 1984, referred to in text, is Pub. L. 98–615, Nov. 8, 1984, 98 Stat. 3195, as amended. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 8331 of Title 5, Government Organization and Employees, and Tables.

PRIOR PROVISIONS

A prior section 226 of Pub. L. 88–643, as added Pub. L. 100–453, title III, §302(a), Sept. 29, 1988, 102 Stat. 1906; amended Pub. L. 102–88, title III, §304(b), (c), Aug. 14, 1991, 105 Stat. 431, 432; Pub. L. 102–183, title III, §306(a), (b), Dec. 4, 1991, 105 Stat. 1265, related to survivor annuities for previous spouses and second chance to elect survivor annuity for certain spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

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 service 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[1] 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.

[1] See References in Text note below.

(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 for service credit, to have been separated within the meaning of 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—

(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 commuted compensation 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.

(Pub. L. 88–643, title II, § 231, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3220; amended Pub. L. 103–178, title II, § 202(a)(8), Dec. 3, 1993, 107 Stat. 2026.)

REFERENCES IN TEXT

Section 5532 of title 5, referred to in subsec. (b)(2), was repealed by Pub. L. 106–65, div. A, title VI, § 651(a)(1), Oct. 5, 1999, 113 Stat. 664.

PRIOR PROVISIONS

A prior section 231 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1046; Ex. Ord. No. 12326, § 2, Sept. 30, 1981, 46 F.R. 48889; Pub. L. 94–522, title II, §§ 205–207, Oct. 17, 1976, 90 Stat. 2470; Ex. Ord. No. 12443, § 1, Sept. 27, 1983, 48 F.R. 44751; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102–183, title III, § 305, Dec. 4, 1991, 105 Stat. 1265, related to retirement for disability or incapacity, medical examination, and recovery and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

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

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

§ 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 section 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.

(Pub. L. 88–643, title II, § 232, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3223; amended Pub. L. 103–178, title II, § 202(a)(9), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 232 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1048; Pub. L. 91–185, § 4, Dec. 30, 1969, 83 Stat. 848; Pub. L. 94–522, title II, § 208, Oct. 17, 1976, 90 Stat. 2471; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622; Pub. L. 100–178, title IV, § 402(a), Dec. 2, 1987, 101 Stat. 1013; Pub. L. 101–193, title III, § 303, Nov. 30, 1989, 103 Stat. 1703; Pub. L. 102–88, title III, § 305(a)(3), Aug. 14, 1991, 105 Stat. 432; Pub. L. 102–183, title III, § 302(b), (c), Dec. 4, 1991, 105 Stat. 1262, 1263; Pub. L. 102–496, title III, § 304(b), Oct. 24, 1992, 106 Stat. 3183, related to death in service and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

1993—Subsec. (b)(4). Pub. L. 103–178 substituted ''eligible for an annuity under section 2034'' for ''eligible for an annuity under section 2032''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

§ 2053. Voluntary retirement

(a) A participant who is at least 50 years of age and has completed 20 years of service may, on the participant's application and with the consent of the Director, be retired from the Agency and receive benefits in accordance with the provisions of section 2031 of this title if the participant has not less than 10 years of service with the Agency.

(b) A participant who has at least 25 years of service, ten years of which are with the Agency,

may retire, with the consent of the Director, at any age and receive benefits in accordance with the provisions of section 2031 of this title if the Office of Personnel Management has authorized separation from service voluntarily for Agency employees under section 8336(d)(2) of title 5 with respect to the Civil Service Retirement System or section 8414(b)(1)(B) of such title with respect to the Federal Employees' Retirement System.

(Pub. L. 88–643, title II, § 233, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3225; amended Pub. L. 103–36, § 3, June 8, 1993, 107 Stat. 106.)

PRIOR PROVISIONS

A prior section 233 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1048, related to voluntary retirement and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

1993—Pub. L. 103–36 designated existing provisions as subsec. (a) and added subsec. (b).

§ 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 commencing at age 62 dies before reaching age 62, the participant's contributions to the fund, with interest, shall be paid in accordance with the provisions of section 2071 of this title.

(Pub. L. 88–643, title II, § 234, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3225; amended Pub. L. 103–178, title II, § 202(a)(10), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 234 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1048; Pub. L. 97–269, title VI, § 608, Sept. 27, 1982, 96 Stat. 1152; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622, related to discontinued service benefits and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–178 substituted ''section 2071'' for ''sections 2071 and 2121''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

§ 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 receiving compensation under the Senior Intelligence Service pay schedule at the rate 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.

(Pub. L. 88–643, title II, § 235, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3225.)

PRIOR PROVISIONS

A prior section 235 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1049; Ex. Ord. No. 12443, § 13, Sept. 27, 1983, 48 F.R. 44754; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102–183, title III, § 307, Dec. 4, 1991, 105 Stat. 1265, related to mandatory retirement and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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 this subchapter 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 dis-

ability) 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.

(Pub. L. 88–643, title II, § 236, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3226.)

PRIOR PROVISIONS

A prior section 236 of Pub. L. 88–643, as added Pub. L. 101–193, title III, § 302(2), Nov. 30, 1989, 103 Stat. 1703, related to eligibility for annuity and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

A prior section 237 of Pub. L. 88–643, title II, formerly § 236, Oct. 13, 1964, 78 Stat. 1049; Pub. L. 91–626, § 4, Dec. 31, 1970, 84 Stat. 1873; Pub. L. 93–31, May 8, 1973, 87 Stat. 65; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622, renumbered § 237, Pub. L. 101–193, title III, § 302(1), Nov. 30, 1989, 103 Stat. 1703, related to limitation on number of retirements and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

PART E—LUMP-SUM PAYMENTS

§ 2071. 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—

(1) is separated from the Agency for at least 31 consecutive days and is not transferred to employment covered by another retirement system for Government employees;

(2) files an application with the Director for payment of the lump-sum credit;

(3) is not reemployed in a position in which the participant is subject to this subchapter at the time the participant files the application; and

(4) will not become eligible to receive an annuity under this subchapter within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Receipt of the payment of the lump-sum credit by the former participant voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the former participant is reemployed in service subject to this subchapter.

(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)[1] 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 be-

[1] So in original. The words ''of this section 2121(d)'' probably should be ''of this section or by section 2121(d)''.

fore 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 a 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.

(Pub. L. 88–643, title II, §241, as added Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3226; amended Pub. L. 103–178, title II, §202(a)(11), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 241 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1049; Pub. L. 94–522, title II, §209, Oct. 17, 1976, 90 Stat. 2471; Ex. Ord. No. 12443, §5, Sept. 27, 1983, 48 F.R. 44752; Pub. L. 99–335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to disposition of contributions and interest in excess of benefits received and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–178, §202(a)(11)(A), substituted ''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'' 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 2054(b) or 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

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

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.

(Pub. L. 88–643, title II, § 251, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3228.)

PRIOR PROVISIONS

A prior section 251 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1050; Pub. L. 94–522, title II, § 210, Oct. 17, 1976, 90 Stat. 2471; Pub. L. 99–169, title VII, § 702, Dec. 4, 1985, 99 Stat. 1008; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622, related to computation of length of service and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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 83 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 Reserve 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). Credit may not be allowed for the service covered by the refund until the deposit is made, except that a participant who—

(A) separated from Government service before October 1, 1990, and received a refund of the participant's retirement contributions covering a period of service ending before October 1, 1990;

(B) is entitled to an annuity under this subchapter (other than a disability annuity) which commences after December 1, 1992; and

(C) does not make the deposit required to receive credit for the service covered by the refund;

shall be entitled to an annuity actuarially reduced in accordance with section 8334(d)(2)(B) of title 5.

(4) Entitlement under another system

Credit toward retirement under the system shall not be allowed for any period of civilian service on the basis of which the participant is receiving (or will in the future be entitled to receive) an annuity under another retirement system for Government employees, unless the right to such annuity is waived and a deposit is made under paragraph (1) covering that period of service, or a transfer is made pursuant to subsection (c) of this section.

(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 becomes 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, only if a deposit (with interest, if any) is made with respect to that period, as provided in subsection (h) 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 38); or

(B) under chapter 67[1] 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 excluded 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 becomes entitled (or would upon proper application be entitled) to such benefits, the aggregate period of service on which the annuity is based shall be redeter-

[1] See References in Text note below.

mined, effective as of the first day of the month in which 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 payments 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:

7.25 percent of basic pay.	January 1, 1999, to December 31, 1999.
7.4 percent of basic pay.	January 1, 2000, to December 31, 2000.

(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 8334(e) 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.

(Pub. L. 88–643, title II, § 252, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3229; amended Pub. L. 105–33, title VII, § 7001(c)(3), Aug. 5, 1997, 111 Stat. 659; Pub. L. 106–346, § 101(a) [title V, § 505(c)(2)], Oct. 23, 2000, 114 Stat. 1356, 1356A–53.)

REFERENCES IN TEXT

Chapter 67 of title 10, referred to in subsec. (e)(3)(B), was transferred to part II of subtitle E of Title 10, Armed Forces, renumbered as chapter 1223, and amended generally by Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§ 1331) of Title 10 was added by section 1662(j)(7) of Pub. L. 103–337.

PRIOR PROVISIONS

A prior section 252 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1050; Pub. L. 91–626, §§ 5, 6, Dec. 31, 1970, 84 Stat. 1872; Pub. L. 94–522, title II, § 211, Oct. 17, 1976, 90 Stat. 2471; Ex. Ord. No. 12443, §§ 9–11, 15, Sept. 27, 1983, 48 F.R. 44753, 44755; Ex. Ord. No. 12485, July 13, 1984, 49 F.R. 28827; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, related to prior service credit and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

2000—Subsec. (h)(1)(A). Pub. L. 106–346, in introductory provisions, substituted ''December 31, 2000'' for ''December 31, 2002'' and in table struck out item at end relating to payment of 7.5 percent of basic pay for service period January 1, 2001, to December 31, 2002.

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

Amendment by Pub. L. 105–33 effective Oct. 1, 1997, see section 7001(f) of Pub. L. 105–33, set out as a note under section 8334 of Title 5, Government Organization and Employees.

§ 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.

(b) Waiver of contributions

Except to the extent provided under section 2082(e) or 2082(h) of this title, contributions shall not be required covering periods of leave of absence from the Agency granted a participant while performing active service in the Armed Forces.

(Pub. L. 88–643, title II, §253, as added Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3234.)

PRIOR PROVISIONS

A prior section 253 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1052; Pub. L. 99–335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to credit for service while on military leave and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

PART G—MONEYS

§ 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 amounts 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.

(Pub. L. 88–643, title II, §261, as added Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3234.)

PRIOR PROVISIONS

A prior section 261 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1052; Pub. L. 94–522, title I, §102, Oct. 17, 1976, 90 Stat. 2467; Ex. Ord. No. 12443, §12, Sept. 27, 1983, 48 F.R. 44754; Pub. L. 99–335, title V, §501(2), (3), June 6, 1986, 100 Stat. 622, related to estimate of appropriations needed and was set out as a note under section 403 of

this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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.

(Pub. L. 88–643, title II, § 262, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3235.)

PRIOR PROVISIONS

A prior section 262 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1052, related to investment of moneys in the fund and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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.

(c) 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.

(e) Waiver 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 Fund[1] 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

[1] So in original. Probably should not be capitalized.

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.

(Pub. L. 88–643, title II, § 263, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3235.)

PRIOR PROVISIONS

A prior section 263 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1052; Pub. L. 97–269, title VI, § 609, Sept. 27, 1982, 96 Stat. 1153; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622, related to attachment of moneys and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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 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 any other 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.

(Pub. L. 88–643, title II, § 264, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3237; amended Pub. L. 103–178, title II, § 202(a)(12), Dec. 3, 1993, 107 Stat. 2027.)

PRIOR PROVISIONS

A prior section 264 of Pub. L. 88–643, as added Pub. L. 94–522, title II, § 212, Oct. 17, 1976, 90 Stat. 2471, related to recovery of payments and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496. See section 2095 of this title.

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103–178, § 202(a)(12)(A), inserted ''and'' at end.

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 2054(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

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

§ 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.

(Pub. L. 88–643, title II, § 265, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3237; amended Pub. L. 103–178, title II, § 202(a)(13), Dec. 3, 1993, 107 Stat. 2027.)

AMENDMENTS

1993—Pub. L. 103–178 substituted ''subchapter'' for ''chapter'' in two places.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

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)[1] 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 2021 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.

(Pub. L. 88–643, title II, § 271, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3238.)

PRIOR PROVISIONS

A prior section 271 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1052, related to recalled participants and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

WAIVER OF DUAL COMPENSATION PROVISIONS

For waiver of application of the dual compensation reduction provisions of this section for temporary employees during an emergency, see Ex. Ord. No. 13236, Nov. 27, 2001, 66 F.R. 59671, set out as a note under section 2141 of this title.

§ 2112. Reemployment

A participant retired under this subchapter shall not, by reason of that retired status, be barred from employment in Federal Government service in any appointive position for which the participant is qualified.

[1] So in original. Probably should be section ''2051(c)''.

(Pub. L. 88–643, title II, § 272, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3238.)

PRIOR PROVISIONS

A prior section 272 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1053; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622, related to reemployed participants and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 2113. Reemployment compensation

(a) Deduction from basic pay

An annuitant who has retired under this subchapter and who is reemployed in the Federal Government service in any appointive position (either on a part-time or full-time basis) shall be entitled to receive the annuity payable under this subchapter, but there shall be deducted from the annuitant's basic pay a sum equal to the annuity allocable to the period of actual employment.

(b) Recovery of overpayments

In the event of an overpayment under this section, the amount of the overpayment shall be recovered by withholding the amount involved from the basic pay payable to such reemployed annuitant or from any other moneys, including the annuitant's annuity, payable in accordance with this subchapter.

(c) Deposit in fund

Sums deducted from the basic pay of a reemployed annuitant under this section shall be deposited in the Treasury of the United States to the credit of the fund.

(Pub. L. 88–643, title II, § 273, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3238.)

PRIOR PROVISIONS

A prior section 273 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1053; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622, related to reemployment compensation and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

WAIVER OF DUAL COMPENSATION PROVISIONS

For waiver of application of the dual compensation reduction provisions of this section for temporary employees during an emergency, see Ex. Ord. No. 13236, Nov. 27, 2001, 66 F.R. 59671, set out as a note under section 2141 of this title.

PART I—VOLUNTARY CONTRIBUTIONS

§ 2121. Voluntary contributions

(a) Authority for voluntary contributions

(1) In general

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 additional contributions provided under this section shall be in addition to benefits otherwise provided under this subchapter.

(Pub. L. 88–643, title II, § 281, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3239.)

PRIOR PROVISIONS

A prior section 281 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1053; Ex. Ord. No. 12443, § 3, Sept. 27, 1983, 48 F.R. 44751; Pub. L. 99–335, title V, § 501(2), June 6, 1986, 100 Stat. 622, related to voluntary contributions and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

PART J—COST-OF-LIVING ADJUSTMENT OF ANNUITIES

§ 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 commencing 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 commencing 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 1/10 of one percent) of—

(A) 1/12 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.

(Pub. L. 88–643, title II, § 291, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3240; amended Pub. L. 103–178, title II, § 202(a)(14), Dec. 3, 1993, 107 Stat. 2027.)

REFERENCES IN TEXT

GS–15, referred to in subsec. (e)(1)(A), probably means GS–15 of the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 291 of Pub. L. 88–643, title II, Oct. 13, 1964, 78 Stat. 1054; Pub. L. 90–539, Sept. 30, 1968, 82 Stat. 902; Pub. L. 91–185, § 5, Dec. 30, 1969, 83 Stat. 849; Pub. L. 93–210, § 1(a), Dec. 28, 1973, 87 Stat. 908; Pub. L. 94–361, title VIII, § 801(b), July 14, 1976, 90 Stat. 929; Ex. Ord. No. 12326, § 4, Sept. 30, 1981, 46 F.R. 48889; Ex. Ord. No. 12443, §§ 6, 14, Sept. 27, 1983, 48 F.R. 44752, 44754; Pub. L. 99–335, title V, § 501(3), June 6, 1986, 100 Stat. 622, related to cost-of-living adjustment of annuities and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

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

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

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 8340 of Title 5, Government Organization and Employees.

PART K—CONFORMITY WITH CIVIL SERVICE RETIREMENT SYSTEM

§ 2141. Authority to maintain existing areas of conformity between Civil Service and Central Intelligence Agency Retirement and Disability Systems

(a) Presidential authority

(1) Conformity to CSRS by Executive order

Whenever the President determines that it would be appropriate for the purpose of maintaining existing conformity between the Civil Service Retirement and Disability System and the Central Intelligence Agency Retirement and Disability System with respect to substantially identical provisions, the President may, by Executive order, extend to current or former participants in the Central Intelligence Agency Retirement and Disability System, or to their survivors, a provision of law enacted after January 1, 1975, which—

(A) amends subchapter III of chapter 83 of title 5 and is applicable to civil service employees generally; or

(B) otherwise affects current or former participants in the Civil Service Retirement and Disability System, or their survivors.

(2) Extension to CIARDS

Any such order shall extend such provision of law so that it applies in like manner with respect to such Central Intelligence Agency Retirement and Disability System participants, former participants, or survivors.

(3) Legal status

Any such order shall have the force and effect of law.

(4) Effective date

Any such order may be given retroactive effect to a date not earlier than the effective date of the corresponding provision of law applicable to employees under the Civil Service Retirement System.

(b) Effect of Executive order

Provisions of an Executive order issued pursuant to this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) provisions of law enacted before the effective date of the Executive order; and

(2) any prior provision of an Executive order issued under this section.

(Pub. L. 88–643, title II, § 292, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3241.)

PRIOR PROVISIONS

A prior section 292 of Pub. L. 88–643, as added Pub. L. 94–522, title II, § 213, Oct. 17, 1976, 90 Stat. 2471, 2472, related to authority to maintain existing areas of conformity between Civil Service and Central Intelligence Agency Retirement and Disability Systems and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

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. 13105, § 2, Nov. 2, 1998, 63 F.R. 60201, 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.

GEORGE W. BUSH.

APPLICABILITY OF FEDERAL PHYSICIANS COMPARABILITY ALLOWANCE AMENDMENTS OF 2000

The Director of Central Intelligence to issue regulations to reflect application of sections 3(a) and 3(b) of Pub. L. 106–571, amending sections 8331 and 8339 of Title 5, Government Organization and Employees, to the Central Intelligence Agency Retirement and Disability System, see Ex. Ord. No. 13297, § 3(b), Apr. 23, 2003, 68 F.R. 22566, set out as a note under section 4067 of Title 22, Foreign Relations and Intercourse.

§ 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.

(Pub. L. 88–643, title II, § 293, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3242.)

PRIOR PROVISIONS

A prior section 293 of Pub. L. 88–643, as added Pub. L. 99–335, title V, § 504, June 6, 1986, 100 Stat. 623, related to Thrift Savings Fund participation by participants in the Central Intelligence Agency Retirement and Disability System and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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.

(Pub. L. 88–643, title II, § 294, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3242; amended Pub. L. 103–66, title XI, § 11002(c), Aug. 10, 1993, 107 Stat. 409.)

PRIOR PROVISIONS

A prior section 294 of Pub. L. 88–643, as added Pub. L. 99–335, title V, § 505, June 6, 1986, 100 Stat. 624, related to alternative forms of annuities and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–66 substituted ''any participant who has a life-threatening affliction or other critical medical condition'' for ''a participant''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Oct. 1, 1994, and applicable with respect to any annuity commencing on or after that date, see section 11002(d) of Pub. L. 103–66, set out as a note under section 8343a of Title 5, Government Organization and Employees.

§ 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.

(Pub. L. 88–643, title II, § 295, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3242.)

PRIOR PROVISIONS

A prior section 295 of Pub. L. 88–643, as added Pub. L. 101–193, title III, § 307(b), Nov. 30, 1989, 103 Stat. 1707, related to payments from CIARDS fund for portions of certain Civil Service Retirement System annuities and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

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 26, 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 redeposit 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 employees.

(Pub. L. 88–643, title III, § 301, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3243.)

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 (§ 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

A prior section 301 of Pub. L. 88–643, as added Pub. L. 99–335, title V, § 506, June 6, 1986, 100 Stat. 624; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–453, title V, § 502, Sept. 29, 1988, 102 Stat. 1909, related to application of Federal Employees' Retirement System to Agency employees and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 2152. Special rules relating to section 2013 criteria employees

(a) In general

Except as otherwise provided in this section, in the application of chapter 84 of title 5 to an employee of the Agency who is subject to such chapter and is designated by the Director under the criteria prescribed in section 2013 of this title, such employee shall be treated for purposes of determining such employee's retirement benefits and obligations under such chapter as if the employee were a law enforcement officer (as defined in section 8401(17) of title 5).

(b) Voluntary and mandatory retirement

The provisions of sections 2053 and 2055 of this title shall apply to employees referred to in subsection (a) of this section, except that the retirement benefits shall be determined under chapter 84 of title 5.

(c) Recall

(1) Except as provided in paragraph (2), section 2111 of this title shall apply to an employee referred to in subsection (a) of this section.

(2) Contributions during recall service shall be made as provided in section 8422 of title 5.

(3) When an employee recalled under this subsection reverts to a retired status, the annuity of such employee shall be redetermined under the provisions of chapter 84 of title 5.

(Pub. L. 88–643, title III, § 302, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3244.)

PRIOR PROVISIONS

A prior section 302 of Pub. L. 88–643, as added Pub. L. 99–335, title V, § 506, June 6, 1986, 100 Stat. 625, related to special rules relating to employees designated under criteria of former section 203 of Pub. L. 88–643 and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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.

(Pub. L. 88–643, title III, § 303, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3244.)

PRIOR PROVISIONS

A prior section 303 of Pub. L. 88–643, as added Pub. L. 99–335, title V, § 506, June 6, 1986, 100 Stat. 626, related to special rules for other employees for service abroad and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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 en-

titled 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 50;[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 thereto 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)).

(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[2] 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 annuitants

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 the benefits 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 before the effective date of the election to transfer bears to the employee's total creditable service before such effective date; and

(B) if applicable, 50 percent of the employee's benefits under chapter 84 of title 5 or section 2152(a) of this title (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.

(8) Treatment of pro rata share under title 26

For purposes of title 26, payments to a qualified former spouse under this subsection shall be treated as income to the qualified former spouse and not to the employee.

[1] So in original. Probably should be title ''5''.

[2] So in original. Probably should be ''section''.

(d) Qualified former spouse survivor benefits

(1) Entitlement

(A) In general

Subject to an election under section 8416(a) of title 5, and unless otherwise expressly provided by any spousal agreement or court order governing survivor benefits payable under this subsection to a qualified former spouse, such former spouse is entitled to a share, determined under subparagraph (B), of all survivor benefits that would otherwise be payable under subchapter IV of chapter 84 of title 5 to an eligible surviving spouse of the employee.

(B) Amount of share

The share referred to in subparagraph (A) equals—

(i) 100 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; or

(ii) a pro rata share of 100 percent, if the qualified former spouse was not married to the employee throughout such creditable service.

(2) Survivor benefits

(A) The survivor benefits payable under this subsection to a qualified former spouse shall include the amount payable under section 8442(b)(1)(A) of title 5 and any supplementary annuity under section 8442(f) of such title that would be payable if such former spouse were a widow or widower entitled to an annuity under such section.

(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 qualified former spouse remarries before becoming 55 years of age.

(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 benefits shall not be effective if issued after the retirement 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), multiplied by the proportion that the number of days of marriage during the period of the employee's creditable service before the effective date of the election to transfer bears to the employee's total creditable service before such effective date; and

(B) if applicable—

(i) 50 percent of the employee's annuity under chapter 84 of title 5 or section 2152(a) of this title (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 benefit shall 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 not 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 an 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;

(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.

(Pub. L. 88–643, title III, § 304, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3244; amended Pub. L. 103–178, title II, § 202(a)(15), Dec. 3, 1993, 107 Stat. 2027.)

REFERENCES IN TEXT

Section 302(a) of the Federal Employees' Retirement System Act of 1986, referred to in subsecs. (c)(7)(A), (B), (d)(7)(A), (B)(i), and (i)(2)(B), is section 302(a) of Pub. L. 99–335, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 304 of Pub. L. 88–643, as added Pub. L. 99–335, title V, § 506, June 6, 1986, 100 Stat. 626; amended Pub. L. 100–178, title IV, § 402(b)(2), Dec. 2, 1987, 101 Stat. 1014; Pub. L. 102–183, title III, § 309(a), Dec. 4, 1991, 105 Stat. 1266, related to special rules for former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

AMENDMENTS

1993—Subsec. (i)(1). Pub. L. 103–178 substituted ''section 2002(a)(4)'' for ''section 2002(a)(3)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103–178, set out as a note under section 2001 of this title.

§ 2155. Administrative provisions

(a) Finality of decisions of Director

Section 2011(c) of this title shall apply in the administration of chapter 84 of title 5 with respect to employees of the Agency.

(b) Exception

Notwithstanding subsection (a) of this section, section 8461(e) of title 5 shall apply with respect to employees of the Agency who are not participants in the Central Intelligence Agency Retirement and Disability System and are not designated under section 2152(a) of this title.

(Pub. L. 88–643, title III, § 305, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3251.)

PRIOR PROVISIONS

A prior section 305 of Pub. L. 88–643, as added Pub. L. 99–335, title V, § 506, June 6, 1986, 100 Stat. 627, related to administrative provisions and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 2156. Regulations

(a) Requirement

The Director shall prescribe in regulations appropriate procedures to carry out this subchapter. 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.

(Pub. L. 88–643, title III, § 306, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3251.)

PRIOR PROVISIONS

A prior section 306 of Pub. L. 88–643, as added Pub. L. 99–335, title V, § 506, June 6, 1986, 100 Stat. 628, related to regulations and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

§ 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.

(Pub. L. 88–643, title III, § 307, as added Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3251.)

REFERENCES IN TEXT

Sections 301 through 304 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a), are sections 301 to 304 of Pub. L. 99–335, which amended section 3121 of Title 26, Internal Revenue Code, and section 410 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note under section 8331 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 307 of Pub. L. 88–643, as added Pub. L. 99–335, title V, § 506, June 6, 1986, 100 Stat. 628, related to transition provisions and regulations and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88–643 by section 802 of Pub. L. 102–496.

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, con-

ditions, and requirements applicable to the transfer of property of the same type otherwise owned by the United States.

(Pub. L. 103–236, title V, § 552, Apr. 30, 1994, 108 Stat. 482.)

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.

(Pub. L. 103–236, title V, § 553, Apr. 30, 1994, 108 Stat. 482.)

§ 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.

(Pub. L. 103–236, title V, § 554, Apr. 30, 1994, 108 Stat. 482.)

§ 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[1] 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

(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.

(Pub. L. 103–236, title V, § 555, Apr. 30, 1994, 108 Stat. 482.)

§ 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.

(Pub. L. 103–236, title V, § 556, Apr. 30, 1994, 108 Stat. 483.)

[1] So in original. Probably should be preceded by ''Permanent''.

CHAPTER 40—DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION

Sec.
2301. Findings.
2302. Definitions.

SUBCHAPTER I—DOMESTIC PREPAREDNESS

2311. Response to threats of terrorist use of weapons of mass destruction.
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.
2316. Actions to increase civilian expertise.
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2367. Annual report on threat posed to United States by weapons of mass destruction, ballistic missiles, and cruise missiles.
2368. Annual reports on the proliferation of missiles and essential components of nuclear, biological, chemical, and radiological weapons.
2369. Repealed.
2370. Notification of Committees on Armed Services with respect to certain nonproliferation and proliferation activities.
2371. Report on nuclear aspirations of non-state entities, nuclear weapons and related programs in non-nuclear-weapons states and countries not parties to the Nuclear Non-Proliferation Treaty, and certain foreign persons.

§ 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 technologies capable of producing additional quantities of weapons of mass destruction.

(4) 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.

(26) The United States lacks effective policy coordination regarding the threat posed by the proliferation of weapons of mass destruction.

(Pub. L. 104–201, div. A, title XIV, § 1402, Sept. 23, 1996, 110 Stat. 2715.)

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–293, title VII, § 701, Oct. 11, 1996, 110 Stat. 3470, provided that: ''This title [enacting section 2366 of this title and provisions set out as a note under section 2351 of this title] may be cited as the 'Combatting Proliferation of Weapons of Mass Destruction Act of 1996'.''

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 2332d of Title 18, Crimes and Criminal Procedure, amending section 1705 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'.''

Pub. L. 107–228, div. B, title XIII, § 1331, Sept. 30, 2002, 116 Stat. 1448, provided that: ''This subtitle [subtitle C (§§ 1331–1339) of title XIII of div. B of Pub. L. 107–228, enacting subchapter IV–A of this chapter] may be cited as the 'Nonproliferation Assistance Coordination Act of 2002'.''

UTILIZATION OF CONTRIBUTIONS TO INTERNATIONAL NUCLEAR MATERIALS PROTECTION AND COOPERATION PROGRAM AND RUSSIAN PLUTONIUM DISPOSITION PROGRAM

Pub. L. 109–364, div. C, title XXXI, § 3114, Oct. 17, 2006, 120 Stat. 2505, as amended by Pub. L. 110–417, div. C, title XXXI, § 3115, Oct. 14, 2008, 122 Stat. 4757, provided that:

''(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 organization, 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 3302 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 under 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 value of the contribution and the person who contributed it;

''(2) a statement of any amounts used under this section, including, for each such amount, the purposes 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 mem-

bership 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''.

Pub. L. 106–398, §1 [[div. A], title XIV], Oct. 30, 2000, 114 Stat. 1654, 1654A–345, as amended by Pub. L. 109–163, div. A, title X, §1052(d)–(j), Jan. 6, 2006, 119 Stat. 3434, 3435; Pub. L. 109–364, div. A, title X, §1073, Oct. 17, 2006, 120 Stat. 2403; Pub. L. 110–181, div. A, title X, §§1063(e)(2), 1075(a), (b), Jan. 28, 2008, 122 Stat. 323, 333, established the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack, directed the Commission to assess the vulnerability of electric-dependent military systems and other electric-dependent systems in the United States to an electromagnetic pulse attack, to coordinate such work with the Department of Homeland Security, and to submit to Congress, not later than Nov. 30, 2008, a final report on the assessment, and provided that the Commission terminate 30 days after submission of the report.

[Pub. L. 110–181, div. A, title X, §1075(a), Jan. 28, 2008, 122 Stat. 333, which directed amendment of section 1403(a) of Pub. L. 106–398, paraphrased above, by striking ''June 30, 2007'' and inserting ''November 30, 2008'', was treated as substituting ''November 30, 2008'' for ''September 30, 2007'' to reflect the probable intent of Congress and the amendment by Pub.L. 109–364, div. A, title X, §1073, Oct. 17, 2006, 120 Stat. 2403.]

DOMESTIC PREPAREDNESS FOR DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION

Pub. L. 105–261, div. A, title XIV, Oct. 17, 1998, 112 Stat. 2167, as amended by Pub. L. 106–65, div. A, title X, §1064, Oct. 5, 1999, 113 Stat. 769, Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 107–107, div. A, title XV, §1514(a), (b)(1), Dec. 28, 2001, 115 Stat. 1273; Pub. L. 107–296, title VIII, §889(b)(2), Nov. 25, 2002, 116 Stat. 2251, provided that:

''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. 2714; 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. 1403. REPORT ON DOMESTIC EMERGENCY PREPAREDNESS

[Repealed. Pub. L. 107–296, title VIII, §889(b)(2), Nov. 25, 2002, 116 Stat. 2251.]

''SEC. 1404. 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. 1405. 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) DUTIES 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, or 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 101(d) 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 (50 U.S.C. 2302(1)).''

[Pub. L. 107–107, div. A, title XV, § 1514(b)(2), Dec. 28, 2001, 115 Stat. 1274, provided that: ''The amendment made by paragraph (1) [amending section 1405(k) of Pub. L. 105–261, set out above] shall apply with respect to periods of service on the advisory panel under section 1405 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [Pub. L. 105–261] on or after the date of the enactment of this Act [Dec. 28, 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.]

[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.]

EXECUTIVE ORDER NO. 13328

Ex. Ord. No. 13328, Feb. 6, 2004, 69 F.R. 6901, which established the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, was revoked by Ex. Ord. No. 13385, § 3(a), Sept. 29, 2005, 70 F.R. 57990, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 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.

(Pub. L. 104–201, div. A, title XIV, § 1403, Sept. 23, 1996, 110 Stat. 2717.)

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.

(Pub. L. 104–201, div. A, title XIV, § 1411, Sept. 23, 1996, 110 Stat. 2717.)

§ 2312. Repealed. Pub. L. 109–163, div. A, title X, § 1034, Jan. 6, 2006, 119 Stat. 3429

Section, Pub. L. 104–201, div. A, title XIV, § 1412, Sept. 23, 1996, 110 Stat. 2718; Pub. L. 107–107, div. A, title XV, § 1513, Dec. 28, 2001, 115 Stat. 1273, related to emergency response assistance for civilian personnel in case of use or threatened use of weapons of mass destruction.

§ 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 section 301,[1] $15,000,000 is available for providing assistance described in subsection (a) of this section.

(Pub. L. 104–201, div. A, title XIV, § 1413, Sept. 23, 1996, 110 Stat. 2719; Pub. L. 109–163, div. A, title X, § 1031, Jan. 6, 2006, 119 Stat. 3428.)

REFERENCES IN TEXT

Section 301, referred to in subsec. (c), is section 301 of Pub. L. 104–201, div. A, title III, Sept. 23, 1996, 110 Stat. 2475, which is not classified to the Code.

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, including 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

Pub. L. 107–314, div. A, title XIV, § 1401, Dec. 2, 2002, 116 Stat. 2674, provided that:

''(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) DUTIES.—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 private sector manufacturers, 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 implementation of 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 nongovernment 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 pre-

[1] See References in Text note below.

pared pursuant to section 312(6) of title 6, other existing Federal emergency response plans, and programs prepared under section 5196(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.

(Pub. L. 104–201, div. A, title XIV, § 1414, Sept. 23, 1996, 110 Stat. 2720; Pub. L. 109–163, div. A, title X, § 1033, Jan. 6, 2006, 119 Stat. 3429.)

AMENDMENTS

2006—Pub. L. 109–163, § 1033(1), substituted ''Chemical, biological, radiological, nuclear, and high-yield explosives response team'' for ''Chemical-biological emergency response team'' in section catchline.

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(6) 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(c)(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 in the fiscal year, including lessons learned regarding coordination problems and equipment deficiencies.

(Pub. L. 104–201, div. A, title XIV, § 1415, Sept. 23, 1996, 110 Stat. 2720; Pub. L. 107–314, div. C, title XXXI, § 3154(a), Dec. 2, 2002, 116 Stat. 2738; Pub. L. 109–163, div. A, title X, § 1032, Jan. 6, 2006, 119 Stat. 3428.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163, § 1032(a)(1), substituted ''nuclear, radiological, chemical, or'' for ''chemical or'' in heading.

Subsec. (a)(1). Pub. L. 109–163, § 1032(a)(2), substituted ''Secretary of Homeland Security'' for ''Secretary of Defense'' and ''nuclear, radiological, biological, and'' for ''biological weapons and related materials and emergencies involving''.

Subsec. (a)(2). Pub. L. 109–163, § 1032(a)(3), substituted ''in accordance with sections 112(c) and 238(c)(1) of title 6'' for ''during each of fiscal years 1997 through 2013''.

Subsec. (a)(3). Pub. L. 109–163, § 1032(a)(4), inserted ''the Secretary of Defense,'' before ''the Director of the Federal Bureau of Investigation'' and struck out ''the Director of the Federal Emergency Management Agency,'' before ''the Secretary of Energy,''.

Subsecs. (b), (c). 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.

2002—Subsecs. (a)(2), (b)(2). Pub. L. 107–314 substituted ''of fiscal years 1997 through 2013'' for ''of five successive fiscal years beginning with fiscal year 1997''.

CONSTRUCTION OF EXTENSION WITH DESIGNATION OF ATTORNEY GENERAL AS LEAD OFFICIAL

Pub. L. 107–314, div. C, title XXXI, § 3154(b), Dec. 2, 2002, 116 Stat. 2738, provided that: ''The amendments made by subsection (a) [amending this section] may not be construed as modifying the designation of the President titled 'Designation of the Attorney General as the Lead Official for the Emergency Response Assistance Program Under Sections 1412 and 1415 of the National Defense Authorization Act for Fiscal Year 1997', dated April 6, 2000, designating the Attorney General to assume programmatic and funding responsibilities for the Emergency Response Assistance Program under sections 1412 [former 50 U.S.C. 2312] and 1415 [50 U.S.C. 2315] of the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of the National Defense Authorization Act for Fiscal Year 1997).''

§ 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.

(Pub. L. 104–201, div. A, title XIV, § 1416, Sept. 23, 1996, 110 Stat. 2721.)

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.

(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.

[1] So in original. Probably should be ''subsection (b) of this section''.

(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.

(Pub. L. 104–201, div. A, title XIV, § 1417, Sept. 23, 1996, 110 Stat. 2724; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' wherever appearing in text on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 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(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

SUBCHAPTER II—INTERDICTION OF WEAPONS OF MASS DESTRUCTION AND RELATED MATERIALS

§ 2331. Procurement of detection equipment for United States border security

Of the amount authorized to be appropriated by section 301,[1] $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).

(Pub. L. 104–201, div. A, title XIV, § 1421, Sept. 23, 1996, 110 Stat. 2725.)

REFERENCES IN TEXT

Section 301, referred to in text, is section 301 of Pub. L. 104–201, div. A, title III, Sept. 23, 1996, 110 Stat. 2475, which is not classified to the Code.

[1] See References in Text note below.

§ 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 2410 of the Appendix to this title.

(2) Sections 2778 and 2780 of title 22.

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(4) Section 2139a(c) of title 42.

(Pub. L. 104–201, div. A, title XIV, § 1423, Sept. 23, 1996, 110 Stat. 2725; Pub. L. 105–261, div. A, title X, § 1069(c)(1), Oct. 17, 1998, 112 Stat. 2136.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subsec. (b)(3), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

CODIFICATION

Section is comprised of section 1423 of Pub. L. 104–201 which also enacted provisions listed in a table of sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–261 made technical amendment to reference in original act which appears in text as reference to 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.

(Pub. L. 104–201, div. A, title XIV, § 1424, Sept. 23, 1996, 110 Stat. 2726; Pub. L. 108–375, div. A, title XII, § 1211(a), Oct. 28, 2004, 118 Stat. 2087.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–375 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Of the total amount authorized to be appropriated by section 301, $15,000,000 is available for carrying out the programs referred to in subsection (a) of this section.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(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.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, July 24, 1997, 62 F.R. 40727, provided:

Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you, in consultation with the Secretary of State, the authority vested in the President under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) [50 U.S.C. 2333(c)].

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 2334. Training program

The Secretary of Defense may participate in a training program carried out jointly by the Secretary of Defense and the Director of the Federal Bureau of Investigation in order to expand and improve United States efforts to deter the possible proliferation and acquisition of weapons of mass destruction by organized crime organizations in Eastern Europe, the Baltic countries, states of the former Soviet Union, and in other countries in which, as determined by the Secretary of Defense, there exists a significant threat of such proliferation and acquisition.

(Pub. L. 103–337, div. A, title XV, § 1504(e)(3)(A), Oct. 5, 1994, 108 Stat. 2918; Pub. L. 108–375, div. A, title XII, § 1211(b), Oct. 28, 2004, 118 Stat. 2087.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1995, and not as part

of the Defense Against Weapons of Mass Destruction Act of 1996 which comprises this chapter.

AMENDMENTS

2004—Pub. L. 108–375 substituted ''The Secretary of Defense may participate in a'' for ''The training program referred to in paragraph (1)(B) is a'', inserted ''of'' after ''acquisition'', struck out ''and'' after ''countries,'', and inserted before period at end '', and in other countries in which, as determined by the Secretary of Defense, there exists a significant threat of such proliferation and acquisition''.

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.

(Pub. L. 104–201, div. A, title XIV, § 1432, Sept. 23, 1996, 110 Stat. 2726.)

§ 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 cooperative 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 technologies 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 sources 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)[1] for the Department of Energy for the National Nuclear Security Administration for defense nuclear nonproliferation, up to $15,000,000 may be available for carrying out this section.

(Pub. L. 107–314, div. C, title XXXI, § 3155, Dec. 2, 2002, 116 Stat. 2739.)

REFERENCES IN TEXT

Section 3101(a)(2), referred to in subsec. (d), is section 3101(a)(2) of Pub. L. 107–314, div. C, title XXXI, Dec. 2, 2002, 116 Stat. 2729, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Bob Stump National Defense Authorization Act for Fiscal Year 2003,

[1] See References in Text note below.

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, 2013, 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)[1] 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.

(Pub. L. 107–314, div. C, title XXXI, § 3156, Dec. 2, 2002, 116 Stat. 2739.)

REFERENCES IN TEXT

Section 3101(a)(2), referred to in subsec. (c), is section 3101(a)(2) of Pub. L. 107–314, div. C, title XXXI, Dec. 2, 2002, 116 Stat. 2729, which is not classified to the Code.

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.

§ 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)[1] 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.

(Pub. L. 107–314, div. C, title XXXI, § 3158, Dec. 2, 2002, 116 Stat. 2741.)

REFERENCES IN TEXT

Section 3101(a)(2), referred to in subsec. (b)(2), is section 3101(a)(2) of Pub. L. 107–314, div. C, title XXXI, Dec. 2, 2002, 116 Stat. 2729, which is not classified to the Code.

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.

§ 2345. Export control programs

(a) Authority to pursue options for strengthening export control programs

The Secretary of Energy, in coordination with the Secretary of State, may pursue in the region of the former Soviet Union and other regions of concern options for accelerating programs that assist the countries in such regions in improving their domestic export control programs for materials, technologies, and expertise relevant to the construction or use of a nuclear or radiological dispersal device.

(b) Amount for activities

Of the amount authorized to be appropriated by section 3101(a)(2)[1] for the Department of Energy for the National Nuclear Security Adminis-

[1] See References in Text note below.

[1] See References in Text note below.

[1] See References in Text note below.

tration for defense nuclear nonproliferation, up to $5,000,000 may be available for carrying out this section.

(Pub. L. 107–314, div. C, title XXXI, § 3159, Dec. 2, 2002, 116 Stat. 2741.)

REFERENCES IN TEXT

Section 3101(a)(2), referred to in subsec. (b), is section 3101(a)(2) of Pub. L. 107–314, div. C, title XXXI, Dec. 2, 2002, 116 Stat. 2729, which is not classified to the Code.

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,[1] $2,000,000 is available to the Department of Defense for carrying out research referred to in subsection (b)(3) of this section.

(Pub. L. 104–201, div. A, title XIV, § 1441, Sept. 23, 1996, 110 Stat. 2727; Pub. L. 105–261, div. A, title X, § 1069(c)(2), Oct. 17, 1998, 112 Stat. 2136.)

REFERENCES IN TEXT

Section 301, referred to in subsec. (c), is section 301 of Pub. L. 104–201, div. A, title III, Sept. 23, 1996, 110 Stat. 2475, which is not classified to the Code.

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105–261 substituted ''of the National Security Council'' for ''established under section 1342''.

COMMISSION TO ASSESS ORGANIZATION OF FEDERAL GOVERNMENT TO COMBAT PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

Pub. L. 104–293, title VII, subtitle A, Oct. 11, 1996, 110 Stat. 3470, as amended by Pub. L. 105–277, div. A, § 101(f) [title VII, § 708], Oct. 21, 1998, 112 Stat. 2681–337, 2681–390, established the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction, directed the Commission to carry out a thorough study of the organization of the Federal Government, including the elements of the intelligence community, with respect to combatting the proliferation of weapons of mass destruction and, not later than 18 months after Jan. 18, 1998, to submit to Congress a report containing a detailed statement of its findings and conclusions, and provided that the Commission terminate 60 days after the date on which it submitted such report.

§ 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.

(F) The Administrator of the Federal Emergency Management Agency.

(G) The Secretary of the Treasury.

(H) The Secretary of Commerce.

(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.

[1] See References in Text note below.

(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.

(Pub. L. 104–201, div. A, title XIV, § 1442, Sept. 23, 1996, 110 Stat. 2727.)

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.

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.

§ 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 terroristic 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.

(Pub. L. 104–201, div. A, title XIV, § 1443, Sept. 23, 1996, 110 Stat. 2728.)

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.

(Pub. L. 104–201, div. A, title XIV, § 1444, Sept. 23, 1996, 110 Stat. 2730; Pub. L. 105–261, div. A, title X, § 1069(c)(3), Oct. 17, 1998, 112 Stat. 2136.)

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.

(Pub. L. 107–228, div. B, title XIII, § 1332, Sept. 30, 2002, 116 Stat. 1448.)

SHORT TITLE

For short title of subtitle C (§§ 1331–1339) of title XIII of div. B of Pub. L. 107–228, which enacted this subchapter, as the ''Nonproliferation Assistance Coordination Act of 2002'', see section 1331 of Pub. L. 107–228, set out as a note under section 2301 of this 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.

(Pub. L. 107–228, div. B, title XIII, § 1333, Sept. 30, 2002, 116 Stat. 1449.)

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 department[1] 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

[1] So in original. Probably should be ''department's''.

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.

(Pub. L. 107–228, div. B, title XIII, § 1334, Sept. 30, 2002, 116 Stat. 1449.)

§ 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 coordination 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.

(Pub. L. 107–228, div. B, title XIII, § 1335, Sept. 30, 2002, 116 Stat. 1450.)

§ 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.

(Pub. L. 107–228, div. B, title XIII, § 1336, Sept. 30, 2002, 116 Stat. 1451.)

§ 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.

(Pub. L. 107–228, div. B, title XIII, § 1337, Sept. 30, 2002, 116 Stat. 1451.)

§ 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.).

(Pub. L. 107–228, div. B, title XIII, § 1338, Sept. 30, 2002, 116 Stat. 1451.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in par. (2), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

§ 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.

(b) Consultation

The President should consult with and brief, from time to time, the appropriate committees of Congress regarding the efficacy of the coordination mechanism established pursuant to section 2357b of this title in achieving its stated objectives.

(Pub. L. 107–228, div. B, title XIII, § 1339, Sept. 30, 2002, 116 Stat. 1451.)

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.

(Pub. L. 104–201, div. A, title XIV, § 1451, Sept. 23, 1996, 110 Stat. 2730.)

§ 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.

(Pub. L. 104–201, div. A, title XIV, § 1452, Sept. 23, 1996, 110 Stat. 2730.)

SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS

Pub. L. 104–201, div. A, title XV, § 1501, Sept. 23, 1996, 110 Stat. 2731, as amended by Pub. L. 105–261, div. A, title XIII, § 1301(a)(2), Oct. 17, 1998, 112 Stat. 2161; Pub. L. 110–181, div. A, title XIII, § 1303, Jan. 28, 2008, 122 Stat. 412, provided that:

''(a) IN GENERAL.—For purposes of section 301 [110 Stat. 2475] and other provisions of this Act [see Tables for classification], Cooperative Threat Reduction programs are the programs specified in subsections (b) and (c).

''(b) SPECIFIED PROGRAMS.—The programs referred to in subsection (a) are the following programs with respect to states of the former Soviet Union:

''(1) Programs to facilitate the elimination, and the safe and secure transportation and storage, of nuclear, chemical, and other weapons and their delivery vehicles.

''(2) Programs to facilitate the safe and secure storage of fissile materials derived from the elimination of nuclear weapons.

''(3) Programs to prevent the proliferation of weapons, weapons components, materials, and weapons-related technology and expertise.

''(4) Programs to expand military-to-military and defense contacts.

''(c) SPECIFIED PROGRAMS WITH RESPECT TO STATES OUTSIDE THE FORMER SOVIET UNION.—The programs referred to in subsection (a) are the following programs with respect to states that are not states of the former Soviet Union:

''(1) Programs to facilitate the elimination, and the safe and secure transportation and storage, of chemical or biological weapons, weapons components, weapons-related materials, and their delivery vehicles.

''(2) Programs to facilitate safe and secure transportation and storage of nuclear weapons, weapons components, and their delivery vehicles.

''(3) Programs to prevent the proliferation of nuclear and chemical weapons, weapons components, and weapons-related military technology and expertise.

''(4) Programs to prevent the proliferation of biological weapons, weapons components, and weapons-related military technology and expertise, which may include activities that facilitate detection and reporting of highly pathogenic diseases or other diseases that are associated with or that could be utilized as an early warning mechanism for disease outbreaks that could impact the Armed Forces of the United States or allies of the United States.

''(5) Programs to expand military-to-military and defense contacts.''

§ 2363. Sense of Congress concerning assistance to states of former Soviet Union

It is the sense of Congress that—

(1) 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 102–484; 22 U.S.C. 5901 et seq.) should be expanded by offering assistance under those programs to other independent states of the former Soviet Union in addition to Russia, Ukraine, Kazakstan, and Belarus; and

(2) 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.

(Pub. L. 104–201, div. A, title XIV, § 1453, Sept. 23, 1996, 110 Stat. 2730; Pub. L. 105–261, div. A, title X, § 1069(c)(4), Oct. 17, 1998, 112 Stat. 2136.)

REFERENCES IN TEXT

Title XIV of the National Defense Authorization Act for Fiscal Year 1993, referred to in par. (1), is title XIV of div. A of Pub. L. 102–484, Oct. 23, 1992, 106 Stat. 2563, known as the Former Soviet Union Demilitarization Act of 1992, which is classified generally to chapter 68 (§ 5901 et seq.) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1998—Par. (1). Pub. L. 105–261 substituted ''title XIV of the National Defense Authorization Act for Fiscal

Year 1993 (Public Law 102–484; 22 U.S.C. 5901 et seq.)'' for ''the National Defense Authorization Act for Fiscal Years 1993 and 1994''.

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.

(Pub. L. 104–201, div. A, title XIV, § 1454, Sept. 23, 1996, 110 Stat. 2730.)

§ 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.

(Pub. L. 104–201, div. A, title XIV, § 1455, Sept. 23, 1996, 110 Stat. 2731.)

§ 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.

(Pub. L. 104–293, title VII, § 721, Oct. 11, 1996, 110 Stat. 3474; Pub. L. 107–306, title VIII, § 811(b)(5)(C), Nov. 27, 2002, 116 Stat. 2424; Pub. L. 108–177, title III, § 361(k), Dec. 13, 2003, 117 Stat. 2626.)

CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 1997, and also as part of the Combatting 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

2003—Subsec. (b)(1). Pub. L. 108–177 substituted ''an annual'' for ''a semiannual''.

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. (b). Pub. L. 107–306, § 811(b)(5)(C)(iii), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–306, § 811(b)(5)(C)(ii), (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 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by 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.

§ 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 territories with weapons of mass destruction, ballistic missiles, or cruise missiles as of November 18, 1997, an estimate of how far in advance the United States is likely to be warned before such foreign country or non-State organization achieves that capability.

(8) For each foreign country or non-State organization that has not achieved the capability to target members of the United States Armed Forces deployed abroad with weapons of mass destruction, ballistic missiles, or cruise missiles as of November 18, 1997, an estimate of how far in advance the United States is likely to be warned before such foreign country or non-State organization achieves that capability.

(d) Classification

Each report under subsection (a) of this section shall be submitted in classified and unclassified form.

(Pub. L. 105–85, div. A, title II, § 234, Nov. 18, 1997, 111 Stat. 1664.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1998, and not as part of the Defense Against Weapons of Mass Destruction Act of 1996 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 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.

REPORT ON IRAN'S CAPABILITY TO PRODUCE NUCLEAR WEAPONS

Pub. L. 110–417, [div. A], title XII, § 1234, Oct. 14, 2008, 122 Stat. 4640, provided that:

''(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], and annually thereafter, the Director of National Intelligence shall submit to Congress a report on Iran's capability to produce nuclear weapons. The report required under this subsection may be submitted in classified form.

''(b) MATTERS TO BE INCLUDED.—The report required under subsection (a) shall include the following:

''(1) The locations, types, and number of centrifuges and other specialized equipment necessary for the enrichment of uranium and any plans to acquire, manufacture, and operate such equipment in the future.

''(2) An estimate of the amount, if any, of highly enriched uranium and weapons grade plutonium acquired or produced to date, an estimate of the amount of weapons grade plutonium that is likely to be produced or acquired in the near- and midterms and the amount of highly enriched uranium that is likely to be produced or acquired in the near- and midterms, and the number of nuclear weapons that could be produced with such materials.

''(3) A evaluation of the extent to which security and safeguards at any nuclear site prevent, slow, verify, or help monitor the enrichment of uranium or the reprocessing of plutonium into weapons-grade materials.

''(4) A description of any weaponization activities, such as the research, design, development, or testing of nuclear weapons or weapons-related components.

''(5) A description of any programs to construct, acquire, test, or improve methods to deliver nuclear weapons, including an assessment of the likely progress of such programs in the near- and midterms.

''(6) A summary of assessments made by allies of the United States of Iran's nuclear weapons program and nuclear-capable delivery systems programs.

''(c) NOTIFICATION.—The President shall notify Congress, in writing, within 15 days of determining that—

''(1) Iran has resumed a nuclear weapons program;

''(2) Iran has met or surpassed any major milestone in its nuclear weapons program; or

''(3) Iran has undertaken to accelerate, decelerate, or cease the development of any significant element within its nuclear weapons program.''

§ 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 system 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 [1] 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 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

[1] So in original. Probably should be preceded by ''the''.

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.

(Pub. L. 107–228, div. B, title XIII, § 1308, Sept. 30, 2002, 116 Stat. 1439.)

REFERENCES IN TEXT

The Iran-Iraq Arms Non-Proliferation Act of 1992, referred to in subsec. (c)(10), is title XVI of div. A of Pub. L. 102–484, Oct. 23, 1992, 106 Stat. 2571, as amended, which is set out as a note under section 1701 of this title.

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 Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

DELEGATION OF FUNCTIONS

For delegation of congressional reporting functions of President under subsec. (a) of this section, see section 1 of Ex. Ord. No. 13313, July 31, 2003, 68 F.R. 46073, set out as a note under section 301 of Title 3, The President.

DEFINITIONS

For definition of ''Secretary'' as used in this section, see section 3 of Pub. L. 107–228, set out as a note under section 2651 of Title 22, Foreign Relations and Intercourse.

§ 2369. Repealed. Pub. L. 111–84, div. A, title X, § 1055(f), Oct. 28, 2009, 123 Stat. 2462

Section, Pub. L. 104–293, title VII, § 722, as added Pub. L. 107–314, div. A, title XII, § 1209(a), Dec. 2, 2002, 116 Stat. 2668, related to semiannual report on contributions of foreign persons to weapons of mass destruction and delivery systems efforts of countries of proliferation concern. See section 2371 of this title.

§ 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.

(Pub. L. 110–417, [div. A], title X, § 1062, Oct. 14, 2008, 122 Stat. 4614.)

CODIFICATION

Section was enacted as part of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, and not as part of the Defense Against Weapons of Mass Destruction Act of 1996 which comprises this chapter.

§ 2371. Report on nuclear aspirations of non-state entities, nuclear weapons and related programs in non-nuclear-weapons states and countries not parties to the Nuclear Non-Proliferation Treaty, and certain foreign persons

(a) In general

The Director of National Intelligence shall biennially 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 a report—

(1) on the nuclear weapons programs and any related programs of countries that are non-nuclear-weapons state parties to the Treaty on Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly known as the ''Nuclear Non-Proliferation Treaty'') and countries that are not parties to the Treaty;

(2) on the nuclear weapons aspirations of such non-state entities as the Director considers appropriate to include in the report; and

(3) that identifies each foreign person that, during the period covered by the report, made a material contribution to the research, development, production, or acquisition by a country of proliferation concern of—

(A) weapons of mass destruction (including nuclear weapons, chemical weapons, or biological weapons); or

(B) ballistic or cruise missile systems.

(b) Elements

The report required under subsection (a) shall include, with respect to each country described in subsection (a)(1) and each non-state entity referred to in subsection (a)(2), the following:

(1) A statement of the number of nuclear weapons possessed by such country or non-state entity.

(2) An estimate of the total number of nuclear weapons that such country or non-state entity seeks to obtain and, in the case of such non-state entity, an assessment of the extent to which such non-state entity is seeking to develop a nuclear weapon or device or radiological dispersion device.

(3) A description of the technical characteristics of any nuclear weapons possessed by such country or non-state entity.

(4) A description of nuclear weapons designs available to such country or non-state entity.

(5) A description of any sources of assistance with respect to nuclear weapons design provided to or by such country or non-state entity and, in the case of assistance provided by such country or non-state entity, a description of to whom such assistance was provided.

(6) An assessment of the annual capability of such country and non-state entity to produce new or newly designed nuclear weapons.

(7) A description of the type of fissile materials used in any nuclear weapons possessed by such country or non-state entity.

(8) An[1] 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 nongovernmental entity, organization, or group

[1] So in original. Probably should be ''A''.

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.

(Pub. L. 111–84, div. A, title X, §1055, Oct. 28, 2009, 123 Stat. 2461.)

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.

''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. 2208. See note under section 101 of Title 10, Armed Forces.

CHAPTER 41—NATIONAL NUCLEAR SECURITY ADMINISTRATION

SUBCHAPTER I—ESTABLISHMENT AND ORGANIZATION

Sec.
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SUBCHAPTER I—ESTABLISHMENT AND ORGANIZATION

§ 2401. Establishment and mission

(a) Establishment

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.

(Pub. L. 106–65, div. C, title XXXII, § 3211, Oct. 5, 1999, 113 Stat. 957.)

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

Pub. L. 106–65, div. C, title XXXII, § 3299, Oct. 5, 1999, 113 Stat. 971, provided that:

''(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 3202, 3204, 3251, 3295, and 3297 [enacting sections 2451 and 2483 of this title and sections 7144a to 7144c 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 3234 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 as references to 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 7144 to 7144c of Title 42, The Public Health and Welfare, amending sections 5314, 5315, 5595, and 8905a 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

Pub. L. 107–107, div. B, title XXX, § 3008, Dec. 28, 2001, 115 Stat. 1352, provided that:

''(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 2004 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:

''(A) The Department of Defense Nuclear Posture Review required pursuant to section 1041 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–262 [former 10 U.S.C. 118 note]).

''(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 REALIGNMENTS 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 3216 of such Act (50 U.S.C. 2406)).''

STUDY AND REPORT RELATED TO IMPROVING MISSION EFFECTIVENESS, PARTNERSHIPS, AND TECHNOLOGY TRANSFER AT NATIONAL SECURITY LABORATORIES AND NUCLEAR WEAPONS PRODUCTION FACILITIES

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3163], Oct. 30, 2000, 114 Stat. 1654, 1654A–473, provided that:

''(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 security 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. 106–398

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 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

Pub. L. 106–65, div. C, title XXXII, §3298, Oct. 5, 1999, 113 Stat. 971, provided that: ''Subtitles A through F of this title [§§3211–3281, enacting this chapter and amending sections 5595 and 8905a of Title 5, Government Organization and Employees] (other than provisions of those subtitles amending existing provisions of law) shall be classified to the United States Code as a new chapter of title 50, 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

[1] See References in Text note below.

established by law or the transfer of functions vested by law in any organizational unit or component.

(Pub. L. 106–65, div. C, title XXXII, § 3212, Oct. 5, 1999, 113 Stat. 957; Pub. L. 106–398, § 1 [div. C, title XXXI, §§ 3152(b), 3159(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–464, 1654A–469; Pub. L. 107–107, div. A, title X, § 1048(i)(12), Dec. 28, 2001, 115 Stat. 1230; Pub. L. 108–375, div. A, title IX, § 902(e), Oct. 28, 2004, 118 Stat. 2025; Pub. L. 110–417, div. C, title XXXI, § 3111, Oct. 14, 2008, 122 Stat. 4753.)

REFERENCES IN TEXT

Section 414 of title 41, referred to in subsec. (c), was amended generally by Pub. L. 108–136, div. A, title XIV, § 1421(a)(1), Nov. 24, 2003, 117 Stat. 1666, and, as so amended, no longer contains a par. (3). See section 414(c)(1) of title 41.

AMENDMENTS

2008—Subsec. (b)(18), (19). Pub. L. 110–417 added par. (18) and redesignated former par. (18) as (19).

2004—Subsec. (e). Pub. L. 108–375 struck out ''Joint'' before ''Nuclear'' in heading and text.

2001—Subsecs. (e), (f). Pub. L. 107–107 redesignated subsec. (e), relating to reorganization authority, as (f).

2000—Subsec. (e). Pub. L. 106–398, § 1 [div. C, title XXXI, § 3159(a)], added subsec. (e) relating to reorganization authority.

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3152(b)], added subsec. (e) relating to membership on Joint Nuclear Weapons Council.

TECHNOLOGY INFRASTRUCTURE PILOT PROGRAM

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3161], Oct. 30, 2000, 114 Stat. 1654, 1654A–470, provided that:

''(a) ESTABLISHMENT.—The Administrator for Nuclear Security shall establish a Technology Infrastructure Pilot Program in accordance with this section.

''(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 succeed, based on its technical merit, team members, management approach, resources, and project plan.

''(B) 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.

''(C) 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.

''(D) 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.

''(E) 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.

''(F) The extent of participation in the project by agencies of State, tribal, or local governments that will make substantive contributions to achieving the goals of the project.

''(G) 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.

''(f) IMPLEMENTATION PLAN.—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 into 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.

''(g) REPORT ON IMPLEMENTATION.—(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 paragraph (1), the Comptroller General shall submit to the congressional defense committees a report containing the Comptroller General's assessment of that report.''

[For definitions of ''national security laboratory'' and ''nuclear weapons production facility'' as used in section 1 [div. C, title XXXI, §3161] of Pub. L. 106–398, set out above, see section 1 [div. C, title XXXI, §3165] of Pub. L. 106–398, set out as a note under section 2401 of this title.]

§ 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.

(Pub. L. 106–65, div. C, title XXXII, §3213, as added Pub. L. 107–107, div. C, title XXXI, §3141(a)(2), Dec. 28, 2001, 115 Stat. 1370.)

PRIOR PROVISIONS

A prior section 2403, Pub. L. 106–65, div. C, title XXXII, §3213, Oct. 5, 1999, 113 Stat. 958; Pub. L. 106–398, §1 [div. C, title XXXI, §3157], Oct. 30, 2000, 114 Stat. 1654, 1654A–468, which related to status of Administration and contractor personnel within Department of Energy, was renumbered section 3220 of Pub. L. 106–65, by Pub. L. 107–107, div. C, title XXXI, §3141(a)(1), Dec. 28, 2001, 115 Stat. 1369, and transferred to section 2410 of this title.

§ 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.

(Pub. L. 106–65, div. C, title XXXII, §3214, Oct. 5, 1999, 113 Stat. 959; Pub. L. 107–107, div. C, title XXXI, §3142, Dec. 28, 2001, 115 Stat. 1370.)

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.

(Pub. L. 106–65, div. C, title XXXII, § 3215, Oct. 5, 1999, 113 Stat. 959.)

§ 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. 12344, dated February 1, 1982 (42 U.S.C. 7158 note)[1] (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525; 42 U.S.C. 7158 note)).[1]

(Pub. L. 106–65, div. C, title XXXII, § 3216, Oct. 5, 1999, 113 Stat. 959.)

REFERENCES IN TEXT

Executive Order No. 12344, referred to in subsec. (d), is set out as a note under section 2511 of this title.

Section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525), referred to in subsec. (d), was formerly set out as a note under section 7158 of Title 42, The Public Health and Welfare, and was renumbered section 4101 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(d)(2), Nov. 24, 2003, 117 Stat. 1757. Section 4101 of Pub. L. 107–314 is classified to section 2511 of this title.

§ 2407. General Counsel

There is a General Counsel of the Administration. The General Counsel is the chief legal officer of the Administration.

(Pub. L. 106–65, div. C, title XXXII, § 3217, Oct. 5, 1999, 113 Stat. 960.)

[1] See References in Text note below.

§ 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.

(Pub. L. 106–65, div. C, title XXXII, § 3218, Oct. 5, 1999, 113 Stat. 960; Pub. L. 109–364, div. C, title XXXI, § 3117(e), Oct. 17, 2006, 120 Stat. 2508.)

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.

(Pub. L. 106–65, div. C, title XXXII, § 3219, as added Pub. L. 106–377, § 1(a)(2) [title III, § 314(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A–81.)

§ 2410. Status of Administration and contractor personnel within Department of Energy

(a) Status of Administration personnel

Each officer or employee of the Administration—

(1) shall be responsible to and subject to the authority, direction, and control of—

(A) the Secretary acting through the Administrator and consistent with section 7132(c)(3) of title 42;

(B) the Administrator; or

(C) the Administrator's designee within the Administration; and

(2) shall not be responsible to, or subject to the authority, direction, or control of, any other officer, employee, or agent of the Department of Energy.

(b) Status of contractor personnel

Each officer or employee of a contractor of the Administration shall not be responsible to, or subject to the authority, direction, or control of, any officer, employee, or agent of the Department of Energy who is not an employee of the

Administration, except for the Secretary of Energy consistent with section 7132(c)(3) of title 42.

(c) Construction of section

Subsections (a) and (b) of this section may not be interpreted to in any way preclude or interfere with the communication of technical findings derived from, and in accord with, duly authorized activities between (1) the head, or any contractor employee, of a national security laboratory or of a nuclear weapons production facility, and (2) the Department of Energy, the President, or Congress.

(d) Prohibition on dual office holding

Except in accordance with sections 2402(a)(2) and 2406(a)(1) of this title:

(1) An individual may not concurrently hold or carry out the responsibilities of—

(A) a position within the Administration; and

(B) a position within the Department of Energy not within the Administration.

(2) No funds appropriated or otherwise made available for any fiscal year may be used to pay, to an individual who concurrently holds or carries out the responsibilities of a position specified in paragraph (1)(A) and a position specified in paragraph (1)(B), the basic pay, salary, or other compensation relating to any such position.

(e) Status of intelligence and counterintelligence personnel

Notwithstanding the restrictions of subsections (a) and (b), each officer or employee of the Administration, or of a contractor of the Administration, who is carrying out activities related to intelligence or counterintelligence shall, in carrying out those activities, be subject to the authority, direction, and control of the Secretary of Energy or the Secretary's delegate.

(Pub. L. 106–65, div. C, title XXXII, § 3220, formerly § 3213, Oct. 5, 1999, 113 Stat. 958; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3157], Oct. 30, 2000, 114 Stat. 1654, 1654A–468; renumbered § 3220, Pub. L. 107–107, div. C, title XXXI, § 3141(a)(1), Dec. 28, 2001, 115 Stat. 1370; Pub. L. 109–364, div. C, title XXXI, § 3117(a)(2)(B), (d), Oct. 17, 2006, 120 Stat. 2507, 2508; Pub. L. 111–84, div. C, title XXXI, § 3121, Oct. 28, 2009, 123 Stat. 2710.)

CODIFICATION

Section was formerly classified to section 2403 of this title.

AMENDMENTS

2009—Subsec. (e). Pub. L. 111–84 amended Pub. L. 109–364, § 3117(a). See 2006 Amendment note below.

2006—Subsec. (e). Pub. L. 109–364, § 3117(a), which, in par. (2), directed repeal of subsec. (e) effective Sept. 30, 2010, was amended generally by Pub. L. 111–84, and as so amended, no longer contains a par. (2) or amends this section.

Pub. L. 109–364, § 3117(d), added subsec. (e).

2000—Subsec. (a). Pub. L. 106–398, § 1 [div. C, title XXXI, § 3157(1)], struck out ''Administration, in carrying out any function of the'' after ''employee of the'' in introductory provisions.

Subsec. (b). Pub. L. 106–398, § 1 [div. C, title XXXI, § 3157(2)], struck out '', in carrying out any function of the Administration,'' after ''contractor of the Administration''.

Subsec. (d). Pub. L. 106–398, § 1 [div. C, title XXXI, § 3157(3)], added subsec. (d).

SUBCHAPTER II—MATTERS RELATING TO SECURITY

§ 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.

(Pub. L. 106–65, div. C, title XXXII, § 3231, Oct. 5, 1999, 113 Stat. 960.)

§ 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.

(Pub. L. 106–65, div. C, title XXXII, § 3232, Oct. 5, 1999, 113 Stat. 960; Pub. L. 109–364, div. C, title XXXI, § 3117(b)(1), Oct. 17, 2006, 120 Stat. 2507.)

AMENDMENTS

2006—Pub. L. 109–364, § 3117(b)(1)(A), struck out ''Office of Defense Nuclear Counterintelligence and'' before ''Office of Defense Nuclear Security'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 3117(b)(1)(B), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows:

''(1) There are within the Administration—

''(A) an Office of Defense Nuclear Counterintelligence; and

''(B) an Office of Defense Nuclear Security.

''(2) Each office established under paragraph (1) shall be headed by a Chief appointed by the Secretary of Energy. The Administrator shall recommend to the Secretary suitable candidates for each such position.''

Subsecs. (b), (c). Pub. L. 109–364, § 3117(b)(1)(C), (D), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to the Chief of Defense Nuclear Counterintelligence.

§ 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.

(Pub. L. 106–65, div. C, title XXXII, § 3233, Oct. 5, 1999, 113 Stat. 961; Pub. L. 109–364, div. C, title XXXI, § 3117(a)(2)(C), (c), Oct. 17, 2006, 120 Stat. 2507, 2508; Pub. L. 111–84, div. C, title XXXI, § 3121, Oct. 28, 2009, 123 Stat. 2710.)

AMENDMENTS

2009—Pub. L. 111–84 amended Pub. L. 109–364, § 3117(a), see 2006 Amendment note below.

2006—Pub. L. 109–364, § 3117(a), which, in par. (2), directed amendment of this section by substituting ''Administrator'' for ''Secretary of Energy'' in subsecs. (a) and (b) and ''Administration'' for ''Office of Counterintelligence of the Department of Energy'' in subsec. (b), effective Sept. 30, 2010, was amended generally by Pub. L. 111–84, and as so amended, no longer contains a par. (2) or amends this section.

Pub. L. 109–364, § 3117(c), substituted ''Secretary of Energy'' for ''Administrator'' in subsecs. (a) and (b) and ''Office of Counterintelligence of the Department of Energy'' for ''Office of Defense Nuclear Counterintelligence'' in subsec. (b).

§ 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.

(Pub. L. 106–65, div. C, title XXXII, § 3234, Oct. 5, 1999, 113 Stat. 961.)

§ 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.

(Pub. L. 106–65, div. C, title XXXII, § 3235, Oct. 5, 1999, 113 Stat. 961.)

REFERENCES IN TEXT

The Electronic Communications Privacy Act of 1986, referred to in subsec. (b), is Pub. L. 99–508, Oct. 21, 1986, 100 Stat. 1848, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 2510 of Title 18, Crimes and Criminal Procedure, and Tables.

§ 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 designating 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.

(Pub. L. 106–65, div. C, title XXXII, § 3236, Oct. 5, 1999, 113 Stat. 962.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2122a of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 106–65, § 3294(e)(1)(A).

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.

(Pub. L. 106–65, div. C, title XXXII, § 3241, Oct. 5, 1999, 113 Stat. 964.)

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. 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 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);

(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.

(Pub. L. 106–65, div. C, title XXXII, § 3242, Oct. 5, 1999, 113 Stat. 964.)

§ 2443. Repealed. Pub. L. 107–107, div. C, title XXXI, § 3143, Dec. 28, 2001, 115 Stat. 1371

Section, Pub. L. 106–65, div. C, title XXXII, § 3245, as added Pub. L. 106–377, § 1(a)(2) [title III, § 315], Oct. 27, 2000, 114 Stat. 1441, 1441A–81, related to prohibition on pay of personnel engaged in concurrent service or duties inside and outside Administration.

§ 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 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a));[1]

(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

[1] So in original. A third closing parenthesis probably should precede the semicolon.

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[2] 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) 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)[3] for defense nuclear nonproliferation activities, $3,000,000 shall be available to carry out the program established under this section.

(Pub. L. 110–417, div. C, title XXXI, § 3113, Oct. 14, 2008, 122 Stat. 4754.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 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 1001 of Title 20 and Tables.

Section 3101(a)(2), referred to in subsec. (h), is section 3101(a)(2) of Pub. L. 110–417, div. C, title XXXI, Oct. 14, 2008, 122 Stat. 4752, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, and not as part of the National Nuclear Security Administration Act which comprises this chapter.

''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. 110–417, Oct. 14, 2008, 122 Stat. 4372. See note under section 101 of Title 10.

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.

[2] So in original. Probably should be followed by ''to''.

[3] See References in Text note below.

(Pub. L. 106–65, div. C, title XXXII, § 3251, Oct. 5, 1999, 113 Stat. 966.)

TEN-YEAR PLAN FOR USE AND FUNDING OF CERTAIN DEPARTMENT OF ENERGY FACILITIES

Pub. L. 111–84, div. C, title XXXI, § 3141, Oct. 28, 2009, 123 Stat. 2715, provided that:

''(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, each of the following:

(1) The plan required by subsection (b) of this section prepared with respect to that budget.

(2) A report on the plans prepared with respect to the preceding years' budgets, which shall include, for each goal provided in those plans—

(A) the assessment of the Administrator as to whether or not that goal was met; and

(B) if that assessment is that the goal was not met—

(i) the reasons why that goal was not met; and

(ii) the plan of the Administrator for meeting or, if necessary, adjusting that goal.

(Pub. L. 106–65, div. C, title XXXII, § 3252, Oct. 5, 1999, 113 Stat. 966; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3158(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–469.)

AMENDMENTS

2000—Pub. L. 106–398 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

FIRST REPORT ON ASSESSMENT OF PRIOR PLANS; GAO REPORT

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3158(b), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–469, provided that:

''(b) EFFECTIVE DATE OF REQUIREMENT TO ASSESS PRIOR PLAN.—The first report submitted under paragraph (2) of subsection (c) of such section [subsec. (c)(2) of this section] (as added by subsection (a)) shall be the report on the plan prepared with respect to the budget submitted in calendar year 2001.

''(c) GAO REPORT.—Not later than March 15, 2001, the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an assessment of the adequacy of the planning, programming, and budgeting processes of the National Nuclear Security Administration.''

§ 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 prohibit the inclusion in the future-years nuclear security program of amounts for management contingencies, subject to the requirements of subsection (c) of this section.

(Pub. L. 106–65, div. C, title XXXII, § 3253, Oct. 5, 1999, 113 Stat. 966; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3154], Oct. 30, 2000, 114 Stat. 1654, 1654A–465; Pub. L. 109–364, div. C, title XXXI, § 3111(b), Oct. 17, 2006, 120 Stat. 2503; Pub. L. 110–181, div. C, title XXXI, § 3123, Jan. 28, 2008, 122 Stat. 580.)

REFERENCES IN TEXT

Section 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, referred to in subsec. (b)(3), is section 3158 of Pub. L. 105–261, as amended, which was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, and was renumbered section 4202 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(3), Nov. 24, 2003, 117 Stat. 1758. Section 4202 of Pub. L. 107–314 is classified to section 2522 of this title.

AMENDMENTS

2008—Subsec. (b)(6). Pub. L. 110–181 added par. (6).

2006—Subsec. (b)(5). Pub. L. 109–364 added par. (5).

2000—Subsec. (b). Pub. L. 106–398, § 1 [div. C, title XXXI, § 3154(a)], added pars. (1) to (3), redesignated former par. (2) as (4), and struck out former par. (1) which read as follows: ''The estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Administration during the five-fiscal year period covered by the program, expressed in a level of detail comparable to that contained in the budget submitted by the President to Congress under section 1105 of title 31.''

Subsec. (c). 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 Administrator shall include in the materials the Administrator submits to Congress in

support of the budget for any fiscal year that is submitted by the President pursuant to section 1105 of title 31 a description of how the funds identified for each program element in the weapons activities budget of 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 105–261; 112 Stat. 2257; 42 U.S.C. 2121 note).''

Subsec. (d). 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)''. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 106–398, §1 [div. C, title XXXI, §3154(b)(2)], redesignated subsec. (e) as (d).

TECHNICAL BASE AND FACILITIES MAINTENANCE AND RECAPITALIZATION ACTIVITIES

Pub. L. 108–136, div. C, title XXXI, §3114, Nov. 24, 2003, 117 Stat. 1744, as amended by Pub. L. 108–375, div. C, title XXXI, §3113(a), Oct. 28, 2004, 118 Stat. 2160; Pub. L. 109–364, div. C, title XXXI, §3112, Oct. 17, 2006, 120 Stat. 2503, provided that:

''(a) INCLUSION OF PROJECTS IN FACILITIES AND INFRASTRUCTURE RECAPITALIZATION PROGRAM.—(1) The Administrator for Nuclear Security shall complete the selection of projects for inclusion in the Facilities and Infrastructure Recapitalization Program of the National Nuclear Security Administration not later than December 31, 2004.

''(2) Except as provided in paragraph (3), no project may be included in the Facilities and Infrastructure Recapitalization Program after December 31, 2004, unless such project has been selected for inclusion in that program as of that date.

''(3)(A) Subject to the provisions of this paragraph, a project described in subparagraph (B) may be carried out under the Facilities and Infrastructure Recapitalization Program after December 31, 2004, if the Administrator approves the project. The Administrator may not delegate the authority to approve projects under the preceding sentence.

''(B) A project described in this subparagraph is a project that consists of a specific building, facility, or other improvement (including fences, roads, or similar improvements).

''(C) Funds may not be obligated or expended for a project under this paragraph until 60 days after the 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.

''(D) The total number of projects that may be carried out under this paragraph in any fiscal year may not exceed five projects.

''(E) The Administrator may not utilize the authority in this paragraph until 60 days after the later of—

''(i) the date of the submittal to the congressional defense committees of a list of the projects selected for inclusion in the Facilities and Infrastructure Recapitalization Program under paragraph (1); or

''(ii) the date of the submittal to the congressional defense committees of the report required by subsection (c).

''(F) A project may not be carried out under this paragraph unless the project will be completed by September 30, 2013.

''(b) TERMINATION OF FACILITIES AND INFRASTRUCTURE RECAPITALIZATION PROGRAM.—The Administrator shall terminate the Facilities and Infrastructure Recapitalization Program not later than September 30, 2013.

''(c) READINESS IN TECHNICAL BASE AND FACILITIES PROGRAM.—(1) Not later than September 30, 2004, the Administrator shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report setting forth guidelines on the conduct of the Readiness in Technical Base and Facilities program of the National Nuclear Security Administration.

''(2) Such guidelines shall include the following:

''(A) Criteria for the inclusion of projects in the program, and for establishing priorities among projects included in the program.

''(B) Mechanisms for the management of facilities under the program, including maintenance activities referred to in subparagraph (C).

''(C) A description of the scope of maintenance activities under the program, including recurring maintenance, construction of facilities, recapitalization of facilities, and decontamination and decommissioning of facilities.

''(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.

''(d) 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.''

[Pub. L. 108–375, div. C, title XXXI, §3113(b), Oct. 28, 2004, 118 Stat. 2161, provided that: ''The amendments made by subsection (a) [amending section 3114 of Pub. L. 108–136, set out above] may not be construed to authorize any delay in either of the following:

[''(1) The selection of projects for inclusion in the Facilities and Infrastructure Recapitalization Program under subsection (a) of section 3114 of the National Defense Authorization Act for Fiscal Year 2004 [Pub. L. 108–136, set out above].

[''(2) The submittal of the report required by subsection (c) of such section.'']

§ 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.

(Pub. L. 106–65, div. C, title XXXII, § 3254, as added Pub. L. 108–136, div. C, title XXXI, § 3121(a), Nov. 24, 2003, 117 Stat. 1746.)

FIRST REPORT

Pub. L. 108–136, div. C, title XXXI, § 3121(b), Nov. 24, 2003, 117 Stat. 1747, provided that: ''The first report required to be submitted by section 3254 of the National Nuclear Security Administration Act (as added by subsection (a) [this section]) shall be the report covering the first half of fiscal year 2004.''

§ 2455. Biennial plan and budget assessment on the modernization and refurbishment of the nuclear security complex

(a) Nuclear security complex modernization and refurbishment plan and assessment

The Administrator for Nuclear Security shall include with the nuclear security budget materials submitted for each odd-numbered fiscal year—

(1) the plan for the modernization and refurbishment of the nuclear security complex described under subsection (b); and

(2) an assessment by the Administrator of whether both the budget for such fiscal year 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 in accordance with the plan described under subsection (b).

(b) Plan elements

(1) The plan required under subsection (a)(1) shall be designed so that the nuclear security complex is capable of supporting—

(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, except that, if at the time such plan is submitted with the nuclear security budget materials a national security strategy report required under such section 404a has not been submitted to Congress, then such plan shall be designed so that the modernization and refurbishment of the nuclear security complex provided for under such plan is capable of supporting the nuclear security complex recommended in the report of the most recent Quadrennial Defense Review; and

(B) the nuclear posture of the United States as set forth in the most recent Nuclear Posture Review.

(2) The plan required under subsection (a)(1) shall include the following:

(A) A description of the modernization and refurbishment measures the Administrator determines necessary to meet the requirements of the national security strategy of the United States or the most recent Quadrennial Defense Review, whichever is applicable under paragraph (1)(A), and the Nuclear Posture Review.

(B) A schedule for implementing those measures determined necessary under subparagraph (A) during the 10 years following the date of the plan.

(C) The estimated levels of annual funds the Administrator determines necessary to carry out the program, including a discussion of the criteria, evidence, and strategies on which such estimated levels of annual funds are based.

(c) Budget assessment

If the Administrator determines a budget request is insufficient for the modernization and refurbishment of the nuclear security complex provided for in the plan required under subsection (a)(1), the Administrator shall include with the nuclear security budget materials for such fiscal year a further assessment that describes and discusses the risks and implications associated with the ability of the nuclear security complex to support the annual certification of the nuclear stockpile of the United States and maintain its long-term safety, security, and reliability. Such assessment shall be coordinated in advance with the Secretary of Defense and the Commander of the United States Strategic Command.

(d) Definitions

In this section:

(1) The term ''nuclear security complex'' means the physical facilities, technology, and human capital of—

(A) the national security laboratories;

(B) the Pantex Plant;

(C) the Y–12 National Security Complex;

(D) the Kansas City Plant;

(E) the Savannah River Site; and

(F) the Nevada test site.

(2) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(3) The term ''nuclear security budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Administrator for Nuclear Security in support of the budget for that fiscal year.

(4) 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.

(Pub. L. 106–65, div. C, title XXXII, § 3255, as added Pub. L. 111–84, div. C, title XXXI, § 3116(a), Oct. 28, 2009, 123 Stat. 2707.)

§ 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 weapons-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.

(Pub. L. 111–84, div. C, title XXXI, § 3120, Oct. 28, 2009, 123 Stat. 2710.)

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.

(Pub. L. 106–65, div. C, title XXXII, § 3261, Oct. 5, 1999, 113 Stat. 967.)

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 complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.

§ 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 the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

(Pub. L. 106–65, div. C, title XXXII, § 3262, Oct. 5, 1999, 113 Stat. 967.)

REFERENCES IN TEXT

The Office of Federal Procurement Policy Act, referred to in text, is Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§ 401 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 41 and Tables.

§ 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.

(Pub. L. 106–65, div. C, title XXXII, § 3263, Oct. 5, 1999, 113 Stat. 967.)

§ 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 con-

sistent 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.

(Pub. L. 106–65, div. C, title XXXII, § 3264, Oct. 5, 1999, 113 Stat. 967.)

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.

(Pub. L. 106–65, div. C, title XXXII, § 3281, Oct. 5, 1999, 113 Stat. 968.)

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. 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 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.

(Pub. L. 106–65, div. C, title XXXII, § 3291, Oct. 5, 1999, 113 Stat. 968.)

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 Energy relating thereto, to 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.

(Pub. L. 106–65, div. C, title XXXII, § 3292, Oct. 5, 1999, 113 Stat. 969.)

§ 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 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.

(Pub. L. 106–65, div. C, title XXXII, § 3295, Oct. 5, 1999, 113 Stat. 970.)

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.

(Pub. L. 106–65, div. C, title XXXII, § 3296, Oct. 5, 1999, 113 Stat. 971.)

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. 953, 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.

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§ 2501. Definition

In this chapter, the term ''congressional defense committees'' means—

(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Pub. L. 107–314, div. D, § 4002, as added Pub. L. 108–136, div. C, title XXXI, § 3141(c)(2), Nov. 24, 2003, 117 Stat. 1756.)

SHORT TITLE

Pub. L. 107–314, div. D, § 4001(a), formerly div. C, title XXXVI, § 3601, Dec. 2, 2002, 116 Stat. 2756, renumbered div. D, § 4001, and amended by Pub. L. 108–136, div. C, title XXXI, § 3141(c)(1)(A)–(D)(ii), Nov. 24, 2003, 117 Stat. 1753, provided that: ''This division [enacting this chapter] may be cited as the 'Atomic Energy Defense Act'.''

TRANSFER AND CONSOLIDATION OF RECURRING AND GENERAL PROVISIONS ON DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Pub. L. 108–136, div. C, title XXXI, § 3141(a), Nov. 24, 2003, 117 Stat. 1752, provided that:

''(1) IN GENERAL.—The purpose of this section [see Tables for classification] is to assemble together, without substantive amendment but with technical and conforming amendments of a non-substantive nature, recurring and general provisions of law on Department of Energy national security programs that remain in force in order to consolidate and organize such provisions of law into a single Act intended to comprise general provisions of law on such programs.

''(2) CONSTRUCTION OF TRANSFERS.—The transfer of a provision of law by this section shall not be construed as amending, altering, or otherwise modifying the substantive effect of such provision.

''(3) TREATMENT OF SATISFIED REQUIREMENTS.—Any requirement in a provision of law transferred under this section (including a requirement that an amendment to law be executed) that has been fully satisfied in accordance with the terms of such provision of law as of the date of transfer under this section shall be treated as so fully satisfied, and shall not be treated as being revived solely by reason of transfer under this section.

''(4) CLASSIFICATION.—The provisions of the Atomic Energy Defense Act [Pub. L. 107–314, div. D, 50 U.S.C.

2501 et seq.], as amended by this section, shall be classified to the United States Code as a new chapter of title 50, United States Code.''

SUBCHAPTER I—ORGANIZATIONAL MATTERS

§ 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.

(Pub. L. 107–314, div. D, title XLI, § 4101, formerly Pub. L. 98–525, title XVI, § 1634, Oct. 19, 1984, 98 Stat. 2649; renumbered Pub. L. 107–314, div. D, title XLI, § 4101, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(d)(2), Nov. 24, 2003, 117 Stat. 1757.)

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 1. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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 309(a) of the Department of Energy Organization Act (42 U.S.C. 7158), including assigned civilian power reactor programs, and any naval 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 navel [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 assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of personnel who supervise, operate, or maintain naval nuclear propulsion plants; and

(e) 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.

SEC. 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 personnel who supervise, operate or maintain naval nuclear propulsion plants and support facilities for the Department of Energy.

SEC. 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.

SEC. 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 ra-

dioactivity 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.

SEC. 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.

SEC. 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 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 Energy 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.

(3) The Y–12 Plant, Oak Ridge, Tennessee.

(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.

(Pub. L. 107–314, div. D, title XLI, § 4102, formerly Pub. L. 104–201, div. C, title XXXI, § 3140, Sept. 23, 1996, 110 Stat. 2833; renumbered Pub. L. 107–314, div. D, title XLI, § 4102, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(d)(3), Nov. 24, 2003, 117 Stat. 1757.)

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

2003—Subsec. (d)(2). Pub. L. 108–136, § 3141(d)(3)(D), substituted ''January 21, 1997,'' for ''120 days after the date of the enactment of this Act,''.

TRANSFER OF FUNCTIONS

All national security functions and activities performed immediately before Oct. 5, 1999, by covered fa-

cilities 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.

(Pub. L. 107–314, div. D, title XLI, § 4103, formerly Pub. L. 96–540, title II, § 210, Dec. 17, 1980, 94 Stat. 3202; renumbered Pub. L. 107–314, div. D, title XLI, § 4103, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(d)(4), Nov. 24, 2003, 117 Stat. 1757.)

REFERENCES IN TEXT

The Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981, referred to in text, is Pub. L. 96–540, Dec. 17, 1980, 94 Stat. 3197, which enacted this section and section 2762 of this title. For complete classification of this Act to the Code, see Tables.

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:
Pub. L. 96–164, title II, § 210, Dec. 29, 1979, 93 Stat. 1264.

AMENDMENTS

2003—Pub. L. 108–136, § 3131(d)(4)(C)(iii), substituted ''the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96–540) or any other Act'' for ''this or any other Act''.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of Title 42, The Public Health and Welfare.

SUBCHAPTER II—NUCLEAR WEAPONS STOCKPILE MATTERS

PART A—STOCKPILE STEWARDSHIP AND WEAPONS PRODUCTION

§ 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).

(Pub. L. 107–314, div. D, title XLII, § 4201, formerly Pub. L. 103–160, div. C, title XXXI, § 3138, Nov. 30, 1993, 107 Stat. 1946; Pub. L. 105–85, div. C, title XXXI, § 3152(e), Nov. 18, 1997, 111 Stat. 2042; renumbered Pub. L. 107–314, div. D, title XLII, § 4201, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(2), Nov. 24, 2003, 117 Stat. 1758; Pub. L. 111–84, div. C, title XXXI, § 3111, Oct. 28, 2009, 123 Stat. 2702.)

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. (a). Pub. L. 111–84, § 3111(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of Energy shall establish a stewardship program to ensure 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.''

Subsec. (b)(1). Pub. L. 111–84, § 3111(b)(1), substituted ''performance over time'' for ''detonation''.

Subsec. (b)(4), (5). Pub. L. 111–84, § 3111(b)(2), added pars. (4) and (5).

Subsec. (c). Pub. L. 111–84, § 3111(c), struck out subsec. (c). Text read as follows: ''Of funds authorized to be appropriated to the Secretary of Energy for fiscal year 1994 for weapons activities, $157,400,000 shall be available for the stewardship program established under subsection (a).''

1997—Subsec. (d). Pub. L. 105–85, which directed amendment of this section by striking out subsecs. (d) and (e), redesignating subsecs. (f) to (h) as (d) to (f), respectively, and striking out ''and the 60-day period referred to in subsection (e)(2)(A)(ii)'' in subsec. (e), as so redesignated, was executed by striking out subsec. (d) which directed President to report to Congress, because this section did not contain subsecs. (e) to (g).

§ 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.

(Pub. L. 107–314, div. D, title XLII, § 4202, formerly Pub. L. 105–261, div. C, title XXXI, § 3158, Oct. 17, 1998, 112 Stat. 2257; Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; renumbered Pub. L. 107–314, div. D, title XLII, § 4202, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(3), Nov. 24, 2003, 117 Stat. 1758; Pub. L. 111–84, div. C, title XXXI, § 3112, Oct. 28, 2009, 123 Stat. 2703.)

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.

Subsec. (d). Pub. L. 111–84, § 3112(b), added subsec. (d).

1999—Subsec. (c). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security'' before ''of the House of Representatives''.

§ 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.

(Pub. L. 107–314, div. D, title XLII, § 4203, formerly Pub. L. 105–85, div. C, title XXXI, § 3151, Nov. 18, 1997, 111 Stat. 2041; renumbered Pub. L. 107–314, div. D, title XLII, § 4203, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(4), Nov. 24, 2003, 117 Stat. 1758; amended Pub. L. 108–375, div. C, title XXXI, § 3115, Oct. 28, 2004, 118 Stat. 2162.)

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:

Pub. L. 104–106, div. C, title XXXI, § 3153, Feb. 10, 1996, 110 Stat. 624; repealed Pub. L. 105–85, div. C, title XXXI, § 3152(c), Nov. 18, 1997, 111 Stat. 2042.

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

Pub. L. 108–136, div. C, title XXXI, § 3133, Nov. 24, 2003, 117 Stat. 1751, provided that:

''(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 3161(e)(3) [probably should be ''3141(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) 2005 STOCKPILE STEWARDSHIP PLAN DEFINED.—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 3161(e)(4) [probably should be ''3141(e)(4)''] of this Act) that is required to be submitted to Congress not later than March 15, 2005.''

§ 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 hos-

tile 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.

(Pub. L. 107–314, div. D, title XLII, § 4204, formerly Pub. L. 106–65, div. C, title XXXI, § 3133, Oct. 5, 1999, 113 Stat. 926; renumbered Pub. L. 107–314, div. D, title XLII, § 4204, and amended Pub. L. 108–136, div. C, title XXXI, §§ 3111, 3141(e)(5), Nov. 24, 2003, 117 Stat. 1743, 1758; Pub. L. 111–84, div. C, title XXXI, § 3113(a)(2), Oct. 28, 2009, 123 Stat. 2704.)

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—Pub. L. 111–84 amended section generally. Prior to amendment, section related to the nuclear weapons stockpile life extension program.

2003—Subsec. (c). Pub. L. 108–136, § 3111, struck out subsec. (c), which related to a plan for the extension of the effective life of the weapons in the nuclear weapons stockpile.

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

Pub. L. 108–136, div. C, title XXXI, § 3111, Nov. 24, 2003, 117 Stat. 1743, provided that the amendment made by section 3111 is effective December 31, 2004.

§ 2524a. Repealed. Pub. L. 111–84, div. C, title XXXI, § 3113(a)(1), Oct. 28, 2009, 123 Stat. 2704

Section, Pub. L. 107–314, div. D, title XLII, § 4204A, formerly § 4204a, as added Pub. L. 109–163, div. C, title XXXI, § 3111(a), Jan. 6, 2006, 119 Stat. 3539; renumbered § 4204A, Pub. L. 110–181, div. C, title XXXI, § 3117(1), Jan. 28, 2008, 122 Stat. 578, related to the Reliable Replacement Warhead program.

§ 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[1] 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 recommendations 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)(i) 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 the 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.

[1] So in original. Probably should be capitalized.

(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.

(Pub. L. 107–314, div. D, title XLII, § 4205, formerly div. C, title XXXI, § 3141, Dec. 2, 2002, 116 Stat. 2730; renumbered div. D, title XLII, § 4205, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(e)(6), Nov. 24, 2003, 117 Stat. 1759; Pub. L. 111–84, div. C, title XXXI, § 3114(a)(2)–(d), Oct. 28, 2009, 123 Stat. 2706, 2707.)

CODIFICATION

Section was formerly classified to section 7274s of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–84, § 3114(a)(2)(B), added subsec. (c). Former subsec. (c) redesignated (d).

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 ''and any independent evaluations conducted by a dual validation team under subsection (c)'' after ''that laboratory''.

Subsec. (e). Pub. L. 111–84, § 3114(a)(2)(A), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(3)(C). Pub. L. 111–84, § 3114(d)(1), substituted ''subsection (d)'' for ''subsection (c)''.

Subsec. (e)(3)(D). Pub. L. 111–84, § 3114(c), added subpar. (D).

Subsec. (f). Pub. L. 111–84, § 3114(a)(2)(A), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1)(A). Pub. L. 111–84, § 3114(d)(2), substituted ''subsection (e)'' for ''subsection (d)''.

Subsec. (g). Pub. L. 111–84, § 3114(d)(3), substituted ''subsection (f)'' for ''subsection (e)''.

Pub. L. 111–84, § 3114(a)(2)(A), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 111–84, § 3114(a)(2)(A), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 111–84, § 3114(a)(2)(A), redesignated subsec. (h) as (i).

Subsec. (i)(1). Pub. L. 111–84, § 3114(d)(4)(A), substituted ''subsection (e)'' for ''subsection (d)''.

Subsec. (i)(2). Pub. L. 111–84, § 3114(d)(4)(B), substituted ''subsection (f)'' for ''subsection (e)''.

2003—Subsec. (d)(3)(B). Pub. L. 108–136, § 3141(e)(6)(D), substituted ''section 2532 of this title'' for ''section 3137 of the National Defense Authorization Act for Fiscal Year 1996 (42 U.S.C. 2121 note)''.

§ 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.

(Pub. L. 107–314, div. D, title XLII, § 4206, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3194], Oct. 30, 2000, 114 Stat. 1654, 1654A–481; renumbered Pub. L. 107–314, div. D, title XLII, § 4206, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(7), Nov. 24, 2003, 117 Stat. 1759.)

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.

§ 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 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.

(Pub. L. 107–314, div. D, title XLII, § 4207, formerly Pub. L. 100–456, div. A, title XIV, § 1436, Sept. 29, 1988, 102 Stat. 2075; Pub. L. 105–85, div. C, title XXXI, § 3152(i), Nov. 18, 1997, 111 Stat. 2042; renumbered Pub. L. 107–314, div. D, title XLII, § 4207, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(e)(8), Nov. 24, 2003, 117 Stat. 1759.)

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

2003—Pub. L. 108–136, § 3141(e)(8)(D), made technical amendment to section catchline.

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 unclassified report (with a classified annex as necessary) that describes the progress made to the date of the report in achieving the purposes of the program required to be established under subsection (b).''

§ 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.

(Pub. L. 107–314, div. D, title XLII, § 4208, formerly Pub. L. 104–106, div. C, title XXXI, § 3152, Feb. 10, 1996, 110 Stat. 623; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3192], Oct. 30, 2000, 114 Stat. 1654, 1654A–480; renumbered Pub. L. 107–314, div. D, title XLII, § 4208, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(9), Nov. 24, 2003, 117 Stat. 1759; Pub. L. 110–181, div. C, title XXXI, § 3112(b)(1), Jan. 28, 2008, 122 Stat. 577.)

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

2008—Pub. L. 110–181 amended section generally. Prior to amendment, section related to reports and biennial update reports on costs, programmatic issues, and other issues associated with sustaining the capability of the Department of Energy to conduct underground nuclear tests within specified time periods.

2000—Pub. L. 106–398 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 2528a. Repealed. Pub. L. 110–181, div. C, title XXXI, § 3112(a), Jan. 28, 2008, 122 Stat. 577

Section, Pub. L. 108–136, div. C, title XXXI, § 3113, Nov. 24, 2003, 117 Stat. 1743, related to readiness posture for resumption by the United States of underground nuclear weapons tests.

§ 2529. Requirements for specific request for new or modified nuclear weapons

(a) Requirement for request for funds for development

(1) In any fiscal year after fiscal year 2002 in which the Secretary of Energy plans to carry out activities described in paragraph (2) relating to the development of a new nuclear weapon or modified nuclear weapon, the Secretary shall specifically request funds for such activities in the budget of the President for that fiscal year under section 1105(a) of title 31.

(2) The activities described in this paragraph are as follows:

(A) The conduct, or provision for conduct, of research and development which could lead to the production of a new nuclear weapon by the United States.

(B) The conduct, or provision for conduct, of engineering or manufacturing to carry out the production of a new nuclear weapon by the United States.

(C) The conduct, or provision for conduct, of research and development which could lead to the production of a modified nuclear weapon by the United States.

(D) The conduct, or provision for conduct, of engineering or manufacturing to carry out the production of a modified nuclear weapon by the United States.

(b) Budget request format

The Secretary shall include in a request for funds under subsection (a) the following:

(1) In the case of funds for activities described in subparagraph (A) or (C) of subsection (a)(2), a single dedicated line item for all such activities for new nuclear weapons or modified nuclear weapons that are in phase 1, 2, or 2A or phase 6.1, 6.2, or 6.2A (as the case may be), or any concept work prior to phase 1 or 6.1 (as the case may be), of the nuclear weapons acquisition process.

(2) In the case of funds for activities described in subparagraph (B) or (D) of subsection (a)(2), a dedicated line item for each such activity for a new nuclear weapon or modified nuclear weapon that is in phase 3 or higher or phase 6.3 or higher (as the case may be) of the nuclear weapons acquisition process.

(c) Exception

Subsection (a) shall not apply to funds for purposes of conducting, or providing for the conduct of, research and development, or manufacturing and engineering, determined by the Secretary to be necessary to address proliferation concerns.

(d) Definitions

In this section:

(1) The term ''modified nuclear weapon'' means a nuclear weapon that contains a pit or canned subassembly, either of which—

(A) 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 nuclear 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.

(Pub. L. 107–314, div. D, title XLII, § 4209, formerly div. C, title XXXI, § 3143, Dec. 2, 2002, 116 Stat. 2733; renumbered div. D, title XLII, § 4209, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(10), Nov. 24, 2003, 117 Stat. 1759; Pub. L. 111–84, div. C, title XXXI, § 3115, Oct. 28, 2009, 123 Stat. 2707.)

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 replace non-nuclear components, 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

Pub. L. 108–136, div. C, title XXXI, § 3116(c), Nov. 24, 2003, 117 Stat. 1746, provided that: ''The Secretary of Energy may not commence the engineering development phase, or any subsequent phase, of a low-yield nuclear weapon unless specifically authorized by Congress.''

§ 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.

(Pub. L. 107–314, div. D, title XLII, § 4210, formerly Pub. L. 102–377, title V, § 507(f), Oct. 2, 1992, 106 Stat. 1345; renumbered Pub. L. 107–314, div. D, title XLII, § 4210, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(e)(11), Nov. 24, 2003, 117 Stat. 1760.)

CODIFICATION

Section was formerly set out in a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Pub. L. 108–136, div. C, title XXXI, § 3141(e)(11), Nov. 24, 2003, 117 Stat. 1760, which directed the transfer to this section of section 507(f) of the Energy and Water Development Appropriations Act, 1993, ''(Public Law 102–337; 106 Stat. 1345)'', was executed by transferring section 507(f) of Pub. L. 102–377 to this section, to reflect the probable intent of Congress.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(e)(11)(C)(i), inserted section catchline.

§ 2531. Testing of nuclear weapons

(a) In general

Of the funds authorized to be appropriated under section 3101(a)(2) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) for the Department of Energy for fiscal year 1994 for weapons testing, $211,326,000 shall be available for infrastructure maintenance at the Nevada Test Site, and for maintaining the technical capability to resume underground nuclear testing at the Nevada Test Site.

(b) Atmospheric testing of nuclear weapons

None of the funds appropriated pursuant to the National Defense Authorization Act for Fiscal Year 1994 or any other Act for any fiscal year may be available to maintain the capability of

the United States to conduct atmospheric testing of a nuclear weapon.

(Pub. L. 107–314, div. D, title XLII, § 4211, formerly Pub. L. 103–160, div. C, title XXXI, § 3137, Nov. 30, 1993, 107 Stat. 1946; renumbered Pub. L. 107–314, div. D, title XLII, § 4211, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(e)(12), Nov. 24, 2003, 117 Stat. 1760.)

REFERENCES IN TEXT

The National Defense Authorization Act for Fiscal Year 1994, referred to in text, is Pub. L. 103–160, Nov. 30, 1993, 107 Stat. 1547. Section 3101(a)(2) of the Act, 107 Stat. 1936, is not classified to the Code. For complete classification of this Act to the Code, see Tables.

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

2003—Subsec. (a). Pub. L. 108–136, § 3141(e)(12)(D)(i), inserted ''of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160)'' after ''section 3101(a)(2)''.

Subsec. (b). Pub. L. 108–136, § 3141(e)(12)(D)(ii), substituted ''the National Defense Authorization Act for Fiscal Year 1994'' for ''this Act''.

§ 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).

(Pub. L. 107–314, div. D, title XLII, § 4212, formerly Pub. L. 104–106, div. C, title XXXI, § 3137, Feb. 10, 1996, 110 Stat. 620; Pub. L. 104–201, div. C, title XXXI, § 3132(a), (b), Sept. 23, 1996, 110 Stat. 2829; renumbered Pub. L. 107–314, div. D, title XLII, § 4212, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(e)(13), Nov. 24, 2003, 117 Stat. 1760.)

REFERENCES IN TEXT

Section 3101(b) of the National Defense Authorization Act for Fiscal Year 1996, referred to in subsec. (d), is section 3101(b) of Pub. L. 104–106, div. C, title XXXI, Feb. 10, 1996, 110 Stat. 609, which is not classified to the Code.

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

2003—Subsec. (d). Pub. L. 108–136, § 3141(e)(13)(D), inserted ''of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106)'' after ''section 3101(b)''.

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.

(B) The Savannah River Site, South Carolina.

(C) The Kansas City Plant, Missouri.

(D) The Y–12 Plant, Oak Ridge, Tennessee.

(Pub. L. 107–314, div. D, title XLII, § 4213, formerly Pub. L. 104–201, div. C, title XXXI, § 3159, Sept. 23, 1996, 110 Stat. 2842; Pub. L. 105–85, div. A, title XIII, § 1305(c), (d), Nov. 18, 1997, 111 Stat. 1954; Pub. L. 106–65, div. C, title XXXI, § 3163(f), Oct. 5, 1999, 113 Stat. 946; renumbered Pub. L. 107–314, div. D, title XLII, § 4213, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(14), Nov. 24, 2003, 117 Stat. 1760.)

CODIFICATION

Section was formerly classified to section 7274*o* of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Section is comprised of section 4213 of Pub. L. 107–314. Subsec. (c) of section 4213 of Pub. L. 107–314 amended section 179 of Title 10, Armed Forces.

AMENDMENTS

1999—Subsecs. (d), (e). Pub. L. 106–65 added subsec. (d) and redesignated former subsec. (d) as (e).

1997—Subsec. (b). Pub. L. 105–85 substituted ''Not later than 10 days'' for ''As soon as practicable'' and ''committees,'' for ''committees and'' and inserted before period at end '', and to the President''.

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 Energy relating thereto, to 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.

All national security functions and activities performed immediately before Oct. 5, 1999, by nuclear weapons laboratories and production facilities defined in 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.

§ 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 na-

tional 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)[1] 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.

(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.

(Pub. L. 107–314, div. D, title XLII, § 4214, as added Pub. L. 109–364, div. C, title XXXI, § 3111(a), Oct. 17, 2006, 120 Stat. 2502.)

PART B—TRITIUM

§ 2541. Tritium production program

(a) Establishment of program

The Secretary of Energy shall establish a tritium production program that is capable of meeting the tritium requirements of the United States for nuclear weapons. In carrying out the tritium production program, the Secretary shall—

(1) complete the tritium supply and recycling environmental impact statement in preparation by the Secretary as of February 10, 1996; and

(2) assess alternative means for tritium production, including production through—

(A) types of new and existing reactors, including multipurpose reactors (such as advanced light water reactors and gas turbine gas-cooled reactors) capable of meeting both the tritium production requirements and the plutonium disposition requirements of the United States for nuclear weapons;

(B) an accelerator; and

(C) multipurpose reactor projects carried out by the private sector and the Government.

(b) Funding

Of funds authorized to be appropriated to the Department of Energy pursuant to section 3101 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), not more than $50,000,000 shall be available for the tritium production program established pursuant to subsection (a).

(c) Location of tritium production facility

The Secretary shall locate any new tritium production facility of the Department of Energy at the Savannah River Site, South Carolina.

(d) Cost-benefit analysis

(1) The Secretary shall include in the statements referred to in paragraph (2) a comparison of the costs and benefits of carrying out two projects for the separate performance of the tritium production mission of the Department and the plutonium disposition mission of the Department with the costs and benefits of carrying out one multipurpose project for the performance of both such missions.

(2) The statements referred to in paragraph (1) are—

(A) the environmental impact statement referred to in subsection (a)(1);

(B) the plutonium disposition environmental impact statement in preparation by the Secretary as of February 10, 1996; and

(C) assessments related to the environmental impact statements referred to in subparagraphs (A) and (B).

(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

[1] So in original. Probably should be subsection ''(a)''.

(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).

(Pub. L. 107–314, div. D, title XLII, § 4231, formerly Pub. L. 104–106, div. C, title XXXI, § 3133, Feb. 10, 1996, 110 Stat. 618; renumbered Pub. L. 107–314, div. D, title XLII, § 4231, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(e)(16), Nov. 24, 2003, 117 Stat. 1761.)

REFERENCES IN TEXT

Section 3101 of the National Defense Authorization Act for Fiscal Year 1996, referred to in subsec. (b), is section 3101 of Pub. L. 104–106, div. C, title XXXI, Feb. 10, 1996, 110 Stat. 608, which is not classified to the Code.

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

2003—Subsec. (a)(1). Pub. L. 108–136, § 3141(e)(16)(D)(i), substituted ''February 10, 1996'' for ''the date of the enactment of this Act''.

Subsec. (b). Pub. L. 108–136, § 3141(e)(16)(D)(ii), inserted ''of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106)'' after ''section 3101''.

Subsecs. (d)(2)(B), (e). Pub. L. 108–136, § 3141(e)(16)(D)(i), substituted ''February 10, 1996'' for ''the date of the enactment of this Act''.

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.

(Pub. L. 107–314, div. D, title XLII, § 4232, formerly Pub. L. 104–106, div. C, title XXXI, § 3136, Feb. 10, 1996, 110 Stat. 620; renumbered Pub. L. 107–314, div. D, title XLII, § 4232, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(17), Nov. 24, 2003, 117 Stat. 1761.)

§ 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.

(Pub. L. 107–314, div. D, title XLII, § 4233, formerly Pub. L. 104–201, div. C, title XXXI, § 3133(c), (d), Sept. 23, 1996, 110 Stat. 2830; renumbered Pub. L. 107–314, div. D, title XLII, § 4233, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(e)(18), Nov. 24, 2003, 117 Stat. 1761.)

AMENDMENTS

2003—Pub. L. 108–136, § 3141(e)(18)(C)(i), (ii), inserted section catchline and redesignated subsecs. (c) and (d) of section 3133 of Pub. L. 104–201, which were transferred to this section, as subsecs. (a) and (b), respectively, of this section.

Subsec. (a). Pub. L. 108–136, § 3141(e)(18)(C)(iii), inserted ''of Energy'' after ''The Secretary''.

§ 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).

(Pub. L. 107–314, div. D, title XLII, § 4234, formerly Pub. L. 104–201, div. C, title XXXI, § 3134, Sept. 23, 1996, 110 Stat. 2830; renumbered Pub. L. 107–314, div. D, title XLII, § 4234, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(e)(19), Nov. 24, 2003, 117 Stat. 1762.)

REFERENCES IN TEXT

Section 3101 of the National Defense Authorization Act for Fiscal Year 1997, referred to in subsec. (b), is section 3101 of Pub. L. 104–201, div. C, title XXXI, Sept. 23, 1996, 110 Stat. 2820, which is not classified to the Code.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–136, § 3141(e)(19)(D), inserted ''of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201)'' after ''section 3101''.

§ 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.

(Pub. L. 107–314, div. D, title XLII, § 4235, formerly Pub. L. 106–65, div. C, title XXXI, § 3134, Oct. 5, 1999, 113 Stat. 927; renumbered Pub. L. 107–314, div. D, title XLII, § 4235, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(20), Nov. 24, 2003, 117 Stat. 1762.)

SUBCHAPTER III—PROLIFERATION MATTERS

§ 2561. Repealed. Pub. L. 111–84, div. C, title XXXI, § 3117(a), Oct. 28, 2009, 123 Stat. 2709

Section, Pub. L. 107–314, div. D, title XLIII, § 4301, formerly Pub. L. 105–85, div. C, title XXXI, § 3133, Nov. 18, 1997, 111 Stat. 2036; Pub. L. 105–261, div. A, title X, § 1069(b)(3), div. C, title XXXI, § 3131, Oct. 17, 1998, 112 Stat. 2136, 2246; renumbered Pub. L. 107–314, div. D, title XLIII, § 4301, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(f)(2), Nov. 24, 2003, 117 Stat. 1762, related to international cooperative stockpile stewardship.

§ 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[1] 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[2] 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 describing 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 weapons of mass destruction programs or other defense-related programs in the states of the former Soviet Union that the Department seeks to engage in commercial work under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative, including—

(i) a description of the work performed by such institutes and scientists under such weapons of mass destruction programs or other defense-related programs; and

(ii) a description of any work proposed to be performed by such institutes and scientists under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative.

(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.

(Pub. L. 107–314, div. D, title XLIII, § 4302, formerly Pub. L. 106–65, div. C, title XXXI, § 3136, Oct. 5, 1999, 113 Stat. 927; renumbered Pub. L. 107–314, div. D, title XLIII, § 4302, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(f)(3), Nov. 24, 2003, 117 Stat. 1762.)

REFERENCES IN TEXT

Title XXXI of the National Defense Authorization Act for Fiscal Year 2000, referred to in subsec. (b)(1), is title XXXI of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 914, as amended. For complete classification of title XXXI to the Code, see Tables.

This title, referred to in subsec. (b)(2), probably means title XXXI of Pub. L. 106–65. See above.

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108–136, § 3141(f)(3)(D), substituted ''title XXXI of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65)'' for ''this title''.

§ 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.

[1] So in original. Initial letter probably should be lower case.

[2] See References in Text note below.

(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 subsection (a) under systems 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.

(Pub. L. 107–314, div. D, title XLIII, § 4303, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3171], Oct. 30, 2000, 114 Stat. 1654, 1654A–475; Pub. L. 107–314, div. C, title XXXI, § 3153, Dec. 2, 2002, 116 Stat. 2738; renumbered Pub. L. 107–314, div. D, title XLIII, § 4303, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(f)(4), Nov. 24, 2003, 117 Stat. 1763.)

REFERENCES IN TEXT

The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, referred to in subsec. (c)(1), is Pub. L. 106–398, § 1 [H.R. 5408], Oct. 30, 2000, 114 Stat. 1654, 1654A–1, as amended. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly set out as a note under section 5952 of Title 22, Foreign Relations and Intercourse, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (c)(1). Pub. L. 108–136, § 3141(f)(4)(D), substituted ''the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398)'' for ''this Act''.

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 country covered by subsection (a)'' 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 procedures process.

(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) Trechgornyy (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) Avangard.

(B) Lesnoy (Sverdlovsk–45).

(C) Trechgornyy (Zlatoust–36).
(D) Zarechnyy (Penza–19).

(Pub. L. 107–314, div. D, title XLIII, § 4304, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3172], Oct. 30, 2000, 114 Stat. 1654, 1654A–476; renumbered Pub. L. 107–314, div. D, title XLIII, § 4304, by Pub. L. 108–136, div. C, title XXXI, § 3141(f)(5), Nov. 24, 2003, 117 Stat. 1763.)

§ 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.

(Pub. L. 107–314, div. D, title XLIII, § 4305, formerly Pub. L. 104–106, div. C, title XXXI, § 3131, Feb. 10, 1996, 110 Stat. 617; Pub. L. 107–314, div. C, title XXXI, § 3152, Dec. 2, 2002, 116 Stat. 2738; renumbered Pub. L. 107–314, div. D, title XLIII, § 4305, by Pub. L. 108–136, div. C, title XXXI, § 3141(f)(6), Nov. 24, 2003, 117 Stat. 1763.)

CODIFICATION

Section was formerly set out as a note under section 5952 of Title 22, Foreign Relations and Intercourse, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2002—Pub. L. 107–314, § 3152, struck out subsec. (a) designation and heading ''Authority'' and subsec. (b) heading and text. Prior to amendment, subsec. (b) related to semi-annual reports on obligations of funds.

§ 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).

(B) Each report under subparagraph (A) for years before 2010 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) Compliance with such objective.

(ii) 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 15 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 weapons-usable plutonium.

(Pub. L. 107–314, div. D, title XLIII, § 4306, formerly div. C, title XXXI, § 3182, Dec. 2, 2002, 116

Stat. 2747; renumbered div. D, title XLIII, § 4306, by Pub. L. 108–136, div. C, title XXXI, § 3141(f)(7)(A), Nov. 24, 2003, 117 Stat. 1763; amended Pub. L. 109–103, title III, § 313, Nov. 19, 2005, 119 Stat. 2280.)

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 4321 of Title 42 and Tables.

AMENDMENTS

2005—Subsec. (a)(2)(A). Pub. L. 109–103, § 313(1)(A), substituted ''2012'' for ''2009'' in two places.

Subsec. (a)(3)(B)(ii). Pub. L. 109–103, § 313(1)(B)(i), substituted ''2012'' for ''2009''.

Subsec. (a)(3)(C). Pub. L. 109–103, § 313(1)(B)(ii), substituted ''2012'' for ''2009'' in introductory provisions.

Subsec. (b)(1). Pub. L. 109–103, § 313(2)(A), substituted ''(g)'' for ''(a)(2)'' and ''2012'' for ''2009''.

Subsec. (b)(4). Pub. L. 109–103, § 313(2)(B), substituted ''2012'' for ''2009'' wherever appearing.

Subsec. (b)(5). Pub. L. 109–103, § 313(2)(C), substituted ''2012'' for ''2009''.

Subsec. (c). Pub. L. 109–103, § 313(3)(A), substituted ''2012'' for ''2009'' in introductory provisions.

Subsec. (c)(1). Pub. L. 109–103, § 313(3)(B), substituted ''2014'' for ''2011''.

Subsec. (c)(2). Pub. L. 109–103, § 313(3)(C), substituted ''2020'' for ''2017'' in two places.

Subsec. (d)(1). Pub. L. 109–103, § 313(4)(A), substituted ''2014'' for ''2011'', ''subject to the availability of appropriations'' for ''from funds available to the Secretary'', and ''2019'' for ''2016''.

Subsec. (d)(2)(A). Pub. L. 109–103, § 313(4)(B), substituted ''2020'' for ''2017'' in introductory and concluding provisions.

Subsec. (e). Pub. L. 109–103, § 313(5), substituted ''2023'' for ''2020'' in introductory provisions.

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 such 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 mate-

rials located at the Savannah River Site, and for any other fissile materials disposition activities, in such fiscal year.

(Pub. L. 107–314, div. D, title XLIII, § 4306A, formerly Pub. L. 107–107, div. C, title XXXI, § 3155, Dec. 28, 2001, 115 Stat. 1378; renumbered Pub. L. 107–314, div. D, title XLIII, § 4306A, by Pub. L. 108–136, div. C, title XXXI, § 3141(f)(7)(B), Nov. 24, 2003, 117 Stat. 1763.)

§ 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

(ii) permit the United States to take advantage of opportunities to achieve longstanding nonproliferation goals; and

(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 subsection (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.

(Pub. L. 108–136, div. C, title XXXI, § 3124, Nov. 24, 2003, 117 Stat. 1747; Pub. L. 108–375, div. C, title XXXI, § 3131, Oct. 28, 2004, 118 Stat. 2165.)

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''.

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).

§ 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.

(I) 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.

(J) 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.

(K) Accelerated actions for the blend down of highly-enriched uranium to low-enriched uranium.

(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, organized by level of priority.

(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 nonproliferation 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 congressional 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 radiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term ''radiological 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 radiological 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.

(Pub. L. 108–375, div. C, title XXXI, § 3132, Oct. 28, 2004, 118 Stat. 2166; Pub. L. 109–364, div. C, title XXXI, § 3113, Oct. 17, 2006, 120 Stat. 2504.)

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.

§ 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.

(Pub. L. 108–375, div. C, title XXXI, § 3133, Oct. 28, 2004, 118 Stat. 2168.)

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.

§ 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).

(Pub. L. 108–375, div. C, title XXXI, § 3134, Oct. 28, 2004, 118 Stat. 2169.)

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.

(Pub. L. 107–314, div. D, title XLIII, § 4307, as added Pub. L. 110–181, div. C, title XXXI, § 3129(a)(1), Jan. 28, 2008, 122 Stat. 584.)

§ 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.

(Pub. L. 107–314, div. D, title XLIII, § 4308, as added Pub. L. 110–181, div. C, title XXXI, § 3129(a)(1), Jan. 28, 2008, 122 Stat. 584.)

§ 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 research 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.

(Pub. L. 110–417, div. C, title XXXI, § 3114, Oct. 14, 2008, 122 Stat. 4756.)

CODIFICATION

Section is comprised of section 3114 of Pub. L. 110–417. Subsec. (b) of section 3114 of Pub. L. 110–417 amended section 3129(b) of Pub. L. 110–181, div. C, title XXXI, Jan. 28, 2008, 122 Stat. 585.

Section was enacted as part of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, and not as part of the Atomic Energy Defense Act which comprises this chapter.

''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. 110–417, Oct. 14, 2008, 122 Stat. 4372. See note under section 101 of Title 10.

SUBCHAPTER IV—ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT MATTERS

PART A—ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT

§ 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.

(Pub. L. 107–314, div. D, title XLIV, § 4401, formerly Pub. L. 102–190, div. C, title XXXI, § 3134, Dec. 5, 1991, 105 Stat. 1575; renumbered Pub. L. 107–314, div. D, title XLIV, § 4401, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(2), Nov. 24, 2003, 117 Stat. 1764.)

CODIFICATION

Section was formerly classified to section 7274f of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 2582. Requirement to develop future use plans for environmental management programs

(a) Authority 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.

(b) Requirement to develop future use plans

The Secretary shall develop a future use plan for each of the following defense nuclear facilities:

(1) Hanford Site, Richland, Washington.

(2) Rocky Flats Plant, Golden, Colorado.

(3) Savannah River Site, Aiken, South Carolina.

(4) Idaho National Engineering Laboratory, Idaho.

(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.

(f) Deadlines

For each facility listed in subsection (b), the Secretary of Energy shall develop a draft future use plan by October 1, 1997, and a final future use plan by March 15, 1998.

(g) Report

Not later than 60 days after completing development of a final plan for a site listed in subsection (b), the Secretary of Energy shall submit to Congress a report on the plan. The report shall describe the plan and contain such findings and recommendations with respect to the site as the Secretary considers appropriate.

(h) Savings provisions

(1) Nothing in this section, or in a future use plan developed under this section with respect to a defense nuclear facility, shall be construed as requiring any modification to a future use plan with respect to a defense nuclear facility that was developed before September 23, 1996.

(2) 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.

(Pub. L. 107–314, div. D, title XLIV, §4402, formerly Pub. L. 104–201, div. C, title XXXI, §3153, Sept. 23, 1996, 110 Stat. 2839; renumbered Pub. L. 107–314, div. D, title XLIV, §4402, and amended Pub. L. 108–136, div. C, title XXXI, §3141(g)(3), Nov. 24, 2003, 117 Stat. 1764.)

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. (d). Pub. L. 108–136, §3141(g)(3)(D)(i), substituted ''September 23, 1996,'' for ''the date of the enactment of this Act''.

Subsec. (h)(1). Pub. L. 108–136, §3141(g)(3)(D)(ii), substituted ''September 23, 1996'' for ''the date of the enactment of this Act''.

§ 2583. Integrated fissile materials management plan

(a) Plan

The Secretary of Energy shall develop a long-term plan for the integrated management of fissile materials by the Department of Energy. The plan shall—

(1) identify means of coordinating or integrating the responsibilities of the Office of Environmental Management, the Office of Fissile Materials Disposition, the Office of Nuclear Energy, and the Office of Defense Programs for the treatment, storage and disposition of fissile materials, and for the waste streams containing fissile materials, in order to 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.

(Pub. L. 107–314, div. D, title XLIV, §4403, formerly Pub. L. 106–65, div. C, title XXXI, §3172, Oct. 5, 1999, 113 Stat. 948; renumbered Pub. L. 107–314, div. D, title XLIV, §4403, by Pub. L. 108–136, div. C, title XXXI, §3141(g)(4), Nov. 24, 2003, 117 Stat. 1764.)

§ 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 environ-

mental 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 for waste management, including 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.

(Pub. L. 107–314, div. D, title XLIV, § 4404, formerly Pub. L. 103–160, div. C, title XXXI, § 3153, Nov. 30, 1993, 107 Stat. 1950; Pub. L. 103–337, div. C, title XXXI, § 3160(b)–(d), Oct. 5, 1994, 108 Stat. 3094; Pub. L. 104–201, div. C, title XXXI, § 3152, Sept. 23, 1996, 110 Stat. 2839; Pub. L. 105–85, div. C, title XXXI, § 3160, Nov. 18, 1997, 111 Stat. 2048; renumbered Pub. L. 107–314, div. D, title XLIV, § 4404, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(5), Nov. 24, 2003, 117 Stat. 1765.)

CODIFICATION

Section was formerly classified to section 7274k of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

1997—Subsec. (b)(2)(B). Pub. L. 105–85 substituted ''1997'' for ''1995''.

1996—Subsec. (b). Pub. L. 104–201, § 3152(1), substituted ''Biennial'' for ''Annual'' in heading and ''each odd-numbered year after 1995'' for ''each year after 1995'' in par. (2)(B).

Subsec. (d). Pub. L. 104–201, § 3152(2), substituted ''Biennial'' for ''Annual'' in heading, ''each odd-numbered year'' for ''each year'' in par. (1)(B), ''two fiscal years immediately'' for ''the fiscal year immediately'' in introductory provisions of par. (2)(A), and ''prior fiscal years'' for ''prior fiscal year'' in par. (2)(A)(ii).

1994—Subsec. (b)(1). Pub. L. 103–337, § 3160(b), inserted ''including pollution prevention and'' after ''waste management,'' and struck out ''and technology research and development related to such activities and projects'' after ''shutdown status,''.

Subsec. (c)(2)(F). Pub. L. 103–337, § 3160(c)(2)–(4), added subpar. (F).

Subsec. (c)(3). Pub. L. 103–337, § 3160(c)(1), (5), added par. (3).

Subsec. (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.

(Pub. L. 107–314, div. D, title XLIV, § 4405, formerly Pub. L. 104–106, div. C, title XXXI, § 3156, Feb. 10, 1996, 110 Stat. 625; renumbered Pub. L. 107–314, div. D, title XLIV, § 4405, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(6), Nov. 24, 2003, 117 Stat. 1765.)

REFERENCES IN TEXT

Section 3153 of the National Defense Authorization Act for Fiscal Year 1994, referred to in subsec. (b)(2), is section 3153 of Pub. L. 103–160, div. C, title XXXI, Nov. 30, 1993, 107 Stat. 1950, which was formerly classified to section 7274k of Title 42, The Public Health and Welfare, prior to renumbering and transfer to section 2584 of this title by Pub. L. 108–136.

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.

§ 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 develop-

ment 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.

(Pub. L. 107–314, div. D, title XLIV, § 4406, formerly Pub. L. 101–189, div. C, title XXXI, § 3141, Nov. 29, 1989, 103 Stat. 1679; Pub. L. 105–85, div. C, title XXXI, § 3152(g), Nov. 18, 1997, 111 Stat. 2042; renumbered Pub. L. 107–314, div. D, title XLIV, § 4406, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(7), Nov. 24, 2003, 117 Stat. 1765.)

CODIFICATION

Section was formerly classified to section 7274a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(7)(D), made technical amendment to section catchline.

1997—Subsecs. (c), (d). Pub. L. 105–85 redesignated subsec. (d) as (c) and struck out former subsec. (c) which required Secretary of Energy to submit to Congress not later than Apr. 1 each year a report on research activities of Department of Energy for development of technologies referred to in subsec. (a).

§ 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.

(Pub. L. 107–314, div. D, title XLIV, § 4407, formerly Pub. L. 101–510, div. C, title XXXI, § 3134, Nov. 5, 1990, 104 Stat. 1833; renumbered Pub. L. 107–314, div. D, title XLIV, § 4407, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(8), Nov. 24, 2003, 117 Stat. 1765.)

CODIFICATION

Section was formerly classified to section 7274c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(8)(D), made technical amendment to section catchline.

§ 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.

(Pub. L. 107–314, div. D, title XLIV, § 4408, formerly Pub. L. 103–337, div. C, title XXXI, § 3160(e), Oct. 5, 1994, 108 Stat. 3095; renumbered Pub. L. 107–314, div. D, title XLIV, § 4408, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(9), Nov. 24, 2003, 117 Stat. 1765.)

CODIFICATION

Section was formerly set out as a note under section 7274g of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(9)(C), substituted ''Public participation in planning for environmental restoration and waste management at defense nuclear facilities'' for ''Public participation in planning'' in section catchline.

§ 2589. Policy of Department of Energy regarding future defense environmental management matters

(a) Policy required

(1) Commencing not later than October 1, 2005, the Secretary of Energy shall have in effect a policy for carrying out future defense environmental management matters of the Department of Energy. The policy shall specify each officer within the Department with responsibilities for carrying out that policy and, for each such officer, the nature and extent of those responsibilities.

(2) In paragraph (1), the term ''future defense environmental management matter'' means any

environmental cleanup project, decontamination and decommissioning project, waste management project, or related activity that arises out of the activities of the Department in carrying out programs necessary for national security and is to be commenced after November 24, 2003. However, such term does not include any such project or activity the responsibility for which has been assigned, as of November 24, 2003, to the Environmental Management program of the Department.

(b) Reflection in budget

For fiscal year 2006 and each fiscal year thereafter, the Secretary shall ensure that the budget justification materials submitted to Congress in support of the Department of Energy budget for such fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) reflect the policy required by subsection (a).

(c) Consultation

The Secretary shall carry out this section in consultation with the Administrator for Nuclear Security and the Under Secretary of Energy for Energy, Science, and Environment.

(d) Report

The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for fiscal year 2005 (as submitted with the budget of the President under section 1105(a) of title 31) a report on the policy that the Secretary plans to have in effect under subsection (a) as of October 1, 2005. The report shall specify the officers and responsibilities referred to in subsection (a).

(Pub. L. 108–136, div. C, title XXXI, § 3132, Nov. 24, 2003, 117 Stat. 1750.)

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.

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 incentives for the contractor to meet and exceed the performance criteria effectively and efficiently;

(iii) appropriate criteria and incentives for the contractor to seek and engage subcontractors who may more effectively and efficiently perform either unique and technologically challenging tasks or routine and interchangeable services;

(iv) specific incentives for cost savings;

(v) financial accountability; and

(vi) 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 section 254c(d) 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 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 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.

(Pub. L. 107–314, div. D, title XLIV, § 4421, formerly Pub. L. 104–201, div. C, title XXXI, § 3143, Sept. 23, 1996, 110 Stat. 2836; renumbered Pub. L. 107–314, div. D, title XLIV, § 4421, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(11), Nov. 24, 2003, 117 Stat. 1766.)

CODIFICATION

Section was formerly classified to section 7274n of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (i). Pub. L. 108–136, § 3141(g)(11)(D), substituted ''September 23, 2011'' for ''the expiration of the 15-year period beginning on September 23, 1996''.

DEFENSE SITE ACCELERATION COMPLETION

Pub. L. 108–375, div. C, title XXXI, § 3116, Oct. 28, 2004, 118 Stat. 2162, provided that:

''(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

''(3)(A) 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—

''(i) 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

''(B) 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 3302 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 State.

''(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 disposition of radioactive and hazardous materials.

''(3) Nothing in this section amends the definition of 'transuranic waste' or regulations for repository disposal of transuranic waste pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act [Pub. L. 102–579, 106 Stat. 4777] or part 191 of title 40, Code of Federal Regulations.

''(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).

''(5) Nothing in this section amends the West Valley Demonstration Act [Pub. L. 96–368] (42 U.S.C. 2121a [2021a] note).

''(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, to post a bond or fulfill 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.

(Pub. L. 107–314, div. D, title XLIV, § 4422, formerly Pub. L. 101–189, div. C, title XXXI, § 3156, Nov. 29, 1989, 103 Stat. 1683; renumbered Pub. L. 107–314, div. D, title XLIV, § 4422, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(12), Nov. 24, 2003, 117 Stat. 1766.)

CODIFICATION

Section was formerly classified to section 7274b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(12)(D), made technical amendment to section catchline.

PART C—PRIVATIZATION

§ 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) with respect to a contract 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, including any additional obligations to be borne by the Department or contractor 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.

(B) A contract under section 3103 of the National Defense Authorization Act for Fiscal Year 1997.

(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 there-

by violating the provisions of section 1341 of title 31.

(Pub. L. 107–314, div. D, title XLIV, § 4431, formerly Pub. L. 105–85, div. C, title XXXI, § 3132, Nov. 18, 1997, 111 Stat. 2034; renumbered Pub. L. 107–314, div. D, title XLIV, § 4431, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(14), Nov. 24, 2003, 117 Stat. 1767.)

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.

Section 3103 of the National Defense Authorization Act for Fiscal Year 1997, referred to in subsecs. (c)(1)(B)(ii), (2) and (e)(2)(B), is section 3103 of Pub. L. 104–201, div. C, title XXXI, Sept. 23, 1996, 110 Stat. 2824, which is not classified to the Code.

AMENDMENTS

2003—Subsecs. (a), (c)(1)(B)(i). Pub. L. 108–136, § 3141(g)(14)(D)(i), inserted ''of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85)'' after ''section 3102(i)''.

Subsec. (c)(1)(B)(ii). Pub. L. 108–136, § 3141(g)(14)(D)(ii), substituted ''November 18, 1997'' for ''the date of enactment of this Act''.

Subsec. (d). Pub. L. 108–136, § 3141(g)(14)(D)(i), inserted ''of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85)'' after ''section 3102(i)''.

Subsec. (f). Pub. L. 108–136, § 3141(g)(14)(D)(ii), substituted ''November 18, 1997'' for ''the date of enactment of this Act''.

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.

(Pub. L. 107–314, div. D, title XLIV, § 4441, formerly Pub. L. 101–510, div. C, title XXXI, § 3137, Nov. 5, 1990, 104 Stat. 1833; renumbered Pub. L. 107–314, div. D, title XLIV, § 4441, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(16), Nov. 24, 2003, 117 Stat. 1767.)

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(16)(D)(i), made technical amendment to section catchline.

Subsec. (a). Pub. L. 108–136, § 3141(g)(16)(D)(ii), substituted ''Not later than February 3, 1991,'' for ''Within 90 days after the date of the enactment of this Act,''.

Subsec. (b). Pub. L. 108–136, § 3141(g)(16)(D)(iii), substituted ''Not later than March 5, 1991,'' for ''Within 120 days after the date of the enactment of this Act,''.

Subsec. (c). Pub. L. 108–136, § 3141(g)(16)(D)(iv), substituted ''Beginning March 5, 1991,'' for ''Beginning 120 days after the date of the enactment of this Act,''.

Subsec. (d). Pub. L. 108–136, § 3141(g)(16)(D)(v), substituted ''Not later than May 5, 1991,'' for ''Within six months after the date of the enactment of this Act,''.

§ 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 report 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 Senate and the Committee on Armed Services of the House of Representatives, not later than November 29, 2000, a copy of the delegation of authority required by subsection (b)(3).

(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.

(Pub. L. 107–314, div. D, title XLIV, § 4442, formerly Pub. L. 105–261, div. C, title XXXI, § 3139, Oct. 17, 1998, 112 Stat. 2250; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3141(b)–(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–463; Pub. L. 107–107, div. C, title XXXI, § 3135, Dec. 28, 2001, 115 Stat. 1368; renumbered Pub. L. 107–314, div. D, title XLIV, § 4442, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(17), Nov. 24, 2003, 117 Stat. 1767.)

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–136, § 3141(g)(17)(D), substituted ''November 29, 2000,'' for ''30 days after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001,''.

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.

(Pub. L. 107–314, div. D, title XLIV, § 4443, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3141(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–462; renumbered Pub. L. 107–314, div. D, title XLIV, § 4443, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(18), Nov. 24, 2003, 117 Stat. 1768.)

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(18)(C), inserted section catchline and struck out former subsec. heading.

§ 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 2623 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.

(Pub. L. 107–314, div. D, title XLIV, § 4444, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3131], Oct. 30, 2000, 114 Stat. 1654, 1654A–454; renumbered Pub. L. 107–314, div. D, title XLIV, § 4444, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(19), Nov. 24, 2003, 117 Stat. 1768.)

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(19)(D), in introductory provisions, substituted ''section 2623 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.

(Pub. L. 107–314, div. D, title XLIV, § 4451, formerly Pub. L. 104–201, div. C, title XXXI, § 3141, Sept. 23, 1996, 110 Stat. 2834; renumbered Pub. L. 107–314, div. D, title XLIV, § 4451, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(21), Nov. 24, 2003, 117 Stat. 1769.)

§ 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.

(Pub. L. 107–314, div. D, title XLIV, § 4452, formerly Pub. L. 104–201, div. C, title XXXI, § 3142(e), Sept. 23, 1996, 110 Stat. 2836; renumbered Pub. L. 107–314, div. D, title XLIV, § 4452, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(22), Nov. 24, 2003, 117 Stat. 1769.)

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(22)(C), inserted section catchline, struck out former subsec. heading, and inserted in text ''of Energy'' after ''The Secretary''.

§ 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.

(Pub. L. 107–314, div. D, title XLIV, § 4453, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3137(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–460; renumbered Pub. L. 107–314, div. D, title XLIV, § 4453, and amended Pub. L. 108–136, div. C, title XXXI, §§ 3115(a), 3141(g)(23)(A), Nov. 24, 2003, 117 Stat. 1745, 1769.)

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(23)(A)(iii), inserted section catchline and struck out former subsec. heading.

Pub. L. 108–136, § 3115(a), substituted ''H–canyon facility'' for ''F–canyon and H–canyon facilities'' and ''such facility'' for ''such facilities''.

§ 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 the technical staff necessary to operate and so maintain such facilities.

(Pub. L. 107–314, div. D, title XLIV, § 4453A, formerly Pub. L. 106–65, div. C, title XXXI, § 3132, Oct. 5, 1999, 113 Stat. 925; renumbered Pub. L. 107–314, div. D, title XLIV, § 4453A, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(23)(B), Nov. 24, 2003, 117 Stat. 1769.)

§ 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.

(Pub. L. 107–314, div. D, title XLIV, § 4453B, formerly Pub. L. 105–261, div. C, title XXXI, § 3135, Oct. 17, 1998, 112 Stat. 2248; renumbered Pub. L. 107–314, div. D, title XLIV, § 4453B, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(23)(C), Nov. 24, 2003, 117 Stat. 1770.)

§ 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.

(Pub. L. 107–314, div. D, title XLIV, § 4453C, formerly Pub. L. 105–85, div. C, title XXXI, § 3136(b), Nov. 18, 1997, 111 Stat. 2038; renumbered Pub. L. 107–314, div. D, title XLIV, § 4453C, by Pub. L. 108–136, div. C, title XXXI, § 3141(g)(23)(D), Nov. 24, 2003, 117 Stat. 1770.)

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(23)(D)(iii), inserted section catchline and struck out former subsec. heading.

§ 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 so maintain such facilities, pending the development and implementation of the plan referred to in section 2632 of this title.

(Pub. L. 107–314, div. D, title XLIV, § 4453D, formerly Pub. L. 104–201, div. C, title XXXI, § 3142(f), Sept. 23, 1996, 110 Stat. 2836; renumbered Pub. L. 107–314, div. D, title XLIV, § 4453D, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(g)(23)(E), Nov. 24, 2003, 117 Stat. 1770.)

AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(23)(E)(iii), inserted section catchline, struck out former subsec. heading, in-

serted ''of Energy'' after ''The Secretary'', and substituted ''section 2632 of this title'' for ''subsection (e)''.

§ 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 of the Senate and 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.

(Pub. L. 107–314, div. D, title XLIV, § 4454, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3137(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–460; renumbered Pub. L. 107–314, div. D, title XLIV, § 4454, and amended Pub. L. 108–136, div. C, title XXXI, §§ 3115(b), 3141(g)(24), Nov. 24, 2003, 117 Stat. 1745, 1770.)

REFERENCES IN TEXT

The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, referred to in text, is Pub. L. 106–398, § 1 [H.R. 5408], Oct. 30, 2000, 114 Stat. 1654, 1654A–1, as amended. For complete classification of this Act to the Code, see Tables.

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 somewhat 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

PART A—SAFEGUARDS AND SECURITY

§ 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.

(Pub. L. 107–314, div. D, title XLV, § 4501, formerly Pub. L. 104–106, div. C, title XXXI, § 3154, Feb. 10, 1996, 110 Stat. 624; renumbered Pub. L. 107–314, div. D, title XLV, § 4501, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(2), Nov. 24, 2003, 117 Stat. 1771.)

CODIFICATION

Section is comprised of section 4501 of Pub. L. 107–314. Subsec. (b) of section 4501 of Pub. L. 107–314 amended provisions set out as a note under section 2153 of Title 42, The Public Health and Welfare.

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:

(A) January 3, 2000.

(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 complies with Presidential Decision Directives and similar requirements relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such Directives or requirements.

(C) 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.

(D) 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.

(Pub. L. 107–314, div. D, title XLV, §4502, formerly Pub. L. 106–65, div. C, title XXXI, §3146, Oct. 5, 1999, 113 Stat. 935; renumbered Pub. L. 107–314, div. D, title XLV, §4502, and amended Pub. L. 108–136, div. C, title XXXI, §3141(h)(3), Nov. 24, 2003, 117 Stat. 1771.)

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

2003—Subsec. (b)(2). Pub. L. 108–136, § 3141(h)(3)(D)(i)(I), substituted ''on November 4, 1999,'' for ''30 days after October 5, 1999,'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 108–136, § 3141(h)(3)(D)(i)(II), substituted ''January 3, 2000'' for ''The date that is 90 days after October 5, 1999''.

Subsec. (d)(1). Pub. L. 108–136, § 3141(h)(3)(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.

Subsec. (g)(3), (4). Pub. L. 108–136, § 3141(h)(3)(D)(iii), added pars. (3) and (4).

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 2652(g) of this title.

(Pub. L. 107–314, div. D, title XLV, § 4503, formerly Pub. L. 106–65, div. C, title XXXI, § 3143, Oct. 5, 1999, 113 Stat. 934; renumbered Pub. L. 107–314, div. D, title XLV, § 4503, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(4), Nov. 24, 2003, 117 Stat. 1772.)

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.

Subsec. (c). Pub. L. 108–136, § 3141(h)(4)(D)(ii), added subsec. (c).

§ 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.

(Pub. L. 107–314, div. D, title XLV, § 4504, formerly Pub. L. 107–107, div. C, title XXXI, § 3152, Dec. 28, 2001, 115 Stat. 1376; renumbered Pub. L. 107–314, div. D, title XLV, § 4504, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(5)(A), Nov. 24, 2003, 117 Stat. 1772.)

CODIFICATION

Section is comprised of section 4504 of Pub. L. 107–314. Subsec. (c) of section 4504 of Pub. L. 107–314 repealed section 2655 of this title.

Section was formerly classified to section 7383h–1 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–136, § 3141(h)(5)(A)(iv), made technical amendment. See Codification note above.

§ 2655. Repealed. 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

Section, Pub. L. 107–314, div. D, title XLV, § 4504A, formerly Pub. L. 106–65, div. C, title XXXI, § 3154, Oct. 5, 1999, 113 Stat. 941; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3135], Oct. 30, 2000, 114 Stat. 1654, 1654A–456; renumbered Pub. L. 107–314, div. D, title XLV, § 4504A, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(5)(B), Nov. 24, 2003, 117 Stat. 1773, related to a counterintelligence polygraph program for the defense-related activities of the Department of Energy. See section 2654 of this title.

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 and Appropriations of 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 to those committees 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.

(Pub. L. 107–314, div. D, title XLV, § 4505, formerly Pub. L. 106–65, div. C, title XXXI, § 3150, Oct. 5, 1999, 113 Stat. 939; renumbered Pub. L. 107–314, div. D, title XLV, § 4505, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(6), Nov. 24, 2003, 117 Stat. 1773.)

CODIFICATION

Section was formerly classified to section 7383d 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 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.

§ 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.

(Pub. L. 107–314, div. D, title XLV, § 4506, formerly Pub. L. 105–85, div. C, title XXXI, § 3162, Nov. 18, 1997, 111 Stat. 2049; Pub. L. 106–65, div. C, title XXXI, § 3142(h)(2), Oct. 5, 1999, 113 Stat. 934; renumbered Pub. L. 107–314, div. D, title XLV, § 4506, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(7), Nov. 24, 2003, 117 Stat. 1773.)

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

2003—Subsec. (b). Pub. L. 108–136, § 3141(h)(7)(D), which directed the amendment of subsec. (b) by inserting ''of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2048; 42 U.S.C. 7251 note)'' after ''section 3161'', could not be executed because of the repeal of subsec. (b) by Pub. L. 106–65. See 1999 Amendment note below.

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.

(Pub. L. 107–314, div. D, title XLV, § 4507, formerly Pub. L. 106–65, div. C, title XXXI, § 3152, Oct. 5, 1999, 113 Stat. 940; renumbered Pub. L. 107–314, div. D, title XLV, § 4507, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(8), Nov. 24, 2003, 117 Stat. 1773.)

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

2003—Subsec. (c). Pub. L. 108–136, § 3141(h)(8)(D), added subsec. (c).

§ 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.

(Pub. L. 107–314, div. D, title XLV, § 4508, formerly Pub. L. 106–65, div. C, title XXXI, § 3153, Oct. 5, 1999, 113 Stat. 940; renumbered Pub. L. 107–314, div. D, title XLV, § 4508, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(9), Nov. 24, 2003, 117 Stat. 1774.)

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

2003—Subsec. (f). Pub. L. 108–136, § 3141(h)(9)(D), added subsec. (f).

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.

(Pub. L. 107–314, div. D, title XLV, § 4521, formerly Pub. L. 104–106, div. C, title XXXI, § 3155, Feb. 10, 1996, 110 Stat. 625; renumbered Pub. L. 107–314, div. D, title XLV, § 4521, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(11), Nov. 24, 2003, 117 Stat. 1774.)

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 evennumbered 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.

(Pub. L. 107–314, div. D, title XLV, § 4522, formerly Pub. L. 105–261, div. C, title XXXI, § 3161, Oct. 17, 1998, 112 Stat. 2259; Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3193(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–480; renumbered Pub. L. 107–314, div. D, title XLV, § 4522, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(12), Nov. 24, 2003, 117 Stat. 1774; Pub. L. 110–417, div. C, title XXXI, § 3123, Oct. 14, 2008, 122 Stat. 4759.)

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(a)(1), (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, § 3123(a)(2), 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.''

2003—Subsec. (c)(1). Pub. L. 108–136, § 3141(h)(12)(D)(i), substituted ''October 17, 1998,'' for ''the date of the enactment of this Act''.

Subsec. (f)(1). Pub. L. 108–136, § 3141(h)(12)(D)(ii), substituted ''October 17, 1998'' for ''the date of the enactment of this Act''.

Subsec. (f)(2). Pub. L. 108–136, § 3141(h)(12)(D)(iii), substituted ''Commencing with inadvertent releases discovered on or after October 30, 2000, the Secretary'' for ''The Secretary''.

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.''

1999—Subsec. (d)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3193(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–481, 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.

(Pub. L. 107–314, div. D, title XLV, § 4523, formerly Pub. L. 106–65, div. C, title XXXI, § 3149, Oct. 5, 1999, 113 Stat. 938; renumbered Pub. L. 107–314, div. D, title XLV, § 4523, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(13), Nov. 24, 2003, 117 Stat. 1775.)

REFERENCES IN TEXT

Executive Order No. 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 435 of this title prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 3141(h)(13)(D)(i), substituted ''subsection (a) of section 2672 of this title'' for ''subsection (a) of section 3161 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2260; 50 U.S.C. 435 note)''.

Subsec. (b). Pub. L. 108–136, § 3141(h)(13)(D)(ii), substituted ''subsection (b)(1) of section 2672 of this title'' for ''section 3161(b)(1) of that Act'' and ''October 17, 1998,'' for ''the date of the enactment of that Act''.

Subsec. (c). Pub. L. 108–136, § 3141(h)(13)(D)(iii), substituted ''subsection (c) of section 2672 of this title'' for ''section 3161(c) of that Act'' and ''subsection (a) of such section'' for ''section 3161(a) of that Act''.

Subsec. (d). Pub. L. 108–136, § 3141(h)(13)(D)(iv), substituted ''subsection (d) of section 2672 of this title'' for ''section 3161(d) of that Act''.

§ 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.

(Pub. L. 107–314, div. D, title XLV, § 4524, formerly Pub. L. 106–65, div. C, title XXXI, § 3145, Oct. 5, 1999, 113 Stat. 935; renumbered Pub. L. 107–314, div. D, title XLV, § 4524, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(14), Nov. 24, 2003, 117 Stat. 1775.)

CODIFICATION

Section was formerly classified to section 7383b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 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. 12958 (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.

(Pub. L. 107–314, div. D, title XLV, § 4525, formerly Pub. L. 106–65, div. C, title XXXI, § 3173, Oct. 5, 1999, 113 Stat. 949; renumbered Pub. L. 107–314, div. D, title XLV, § 4525, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(15), Nov. 24, 2003, 117 Stat. 1775.)

REFERENCES IN TEXT

Executive Order No. 12958, 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

2003—Subsec. (b). Pub. L. 108–136, § 3141(h)(15)(D), substituted ''October 5, 1999,'' for ''the date of the enactment of this Act''.

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.

(Pub. L. 107–314, div. D, title XLV, § 4541, formerly Pub. L. 104–106, div. C, title XXXI, § 3158, Feb. 10, 1996, 110 Stat. 626; renumbered Pub. L. 107–314, div. D, title XLV, § 4541, by Pub. L. 108–136, div. C, title XXXI, § 3141(h)(17), Nov. 24, 2003, 117 Stat. 1776.)

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 serv-

ice 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 such title.

(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, 2011.

(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).

(Pub. L. 107–314, div. D, title XLVI, § 4601, formerly Pub. L. 103–337, div. C, title XXXI, § 3161, Oct. 5, 1994, 108 Stat. 3095; Pub. L. 105–85, div. C, title XXXI, § 3139, Nov. 18, 1997, 111 Stat. 2040; Pub. L. 105–261, div. C, title XXXI, §§ 3152, 3155, Oct. 17, 1998, 112 Stat. 2253, 2257; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3191], Oct. 30, 2000, 114 Stat. 1654, 1654A–480; Pub. L. 107–314, div. C, title XXXI, § 3174, Dec. 2, 2002, 116 Stat. 2745; renumbered Pub. L. 107–314, div. D, title XLVI, § 4601, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(2), Nov. 24, 2003, 117 Stat. 1776; Pub. L. 108–375, div. C, title XXXI, § 3112, Oct. 28, 2004, 118 Stat. 2160; Pub. L. 109–364, div. C, title XXXI, § 3115, Oct. 17, 2006, 120 Stat. 2506; Pub. L. 111–32, title IV, § 402, June 24, 2009, 123 Stat. 1877; Pub. L. 111–84, div. C, title XXXI, § 3119, Oct. 28, 2009, 123 Stat. 2709.)

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.

CODIFICATION

Section was formerly set out as a note under section 7231 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2009—Subsec. (c)(1). Pub. L. 111–84 substituted ''September 30, 2011'' for ''September 30, 2009''.

Pub. L. 111–32 substituted ''September 30, 2009'' for ''September 30, 2008''.

2006—Subsec. (c)(1). Pub. L. 109–364 substituted ''September 30, 2008'' for ''September 30, 2006''.

2004—Subsec. (c)(1). Pub. L. 108–375 substituted ''September 30, 2006'' for ''September 30, 2004''.

2002—Subsec. (c)(1). Pub. L. 107–314, § 3174, substituted ''September 30, 2004'' for ''September 30, 2002''.

2000—Subsec. (c)(1). Pub. L. 106–398 substituted ''September 30, 2002'' for ''September 30, 2000''.

1998—Subsec. (a)(2). Pub. L. 105–261, § 3155, substituted ''level III of the Executive Schedule under section 5314'' for ''level IV of the Executive Schedule under section 5315''.

Subsec. (c)(1). Pub. L. 105–261, § 3152, substituted ''September 30, 2000'' for ''September 30, 1999''.

1997—Subsec. (c). Pub. L. 105–85, § 3139(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.

(3) The Inspector General of the Department of Energy.

(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.

(2)(A) If a contractor fails to comply with an order issued under paragraph (1)(B), the Secretary may file an action for enforcement of the order in the appropriate United States district court.

(B) In any action brought under subparagraph (A), the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

***(l)* Relationship to other laws**

The protections provided by this section are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101–512)[1] or any other law that may provide protection for disclosures of information by employees of the Department of Energy or of a contractor of the Department.

(m) Annual report

(1) Not later than 30 days after the commencement of each fiscal year, the Director 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 investigations undertaken under subsection (j)(1)(B) during the preceding fiscal year, including a summary of the results of each such investigation.

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[1] See References in Text note below.

(2) A report under paragraph (1) may not identify or otherwise provide any information about an individual submitting a complaint under this section without the consent of the individual.

(n) Implementation report

Not later than December 5, 1999, 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 describing the implementation of the program required by this section.

(Pub. L. 107–314, div. D, title XLVI, § 4602, formerly Pub. L. 106–65, div. C, title XXXI, § 3164, Oct. 5, 1999, 113 Stat. 946; renumbered Pub. L. 107–314, div. D, title XLVI, § 4602, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(i)(3), Nov. 24, 2003, 117 Stat. 1776.)

REFERENCES IN TEXT

The Whistleblower Protection Act of 1989, referred to in subsec. (*l*), is Pub. L. 101–12, Apr. 10, 1989, 103 Stat. 16, as amended, which enacted subchapters II (§ 1211 et seq.) and III (§ 1221 et seq.) of chapter 12 and section 3352 of Title 5, Government Organization and Employees, amended sections 1201 to 1206, 1209, 1211, 2302, 2303, 3393, 7502, 7512, 7521, 7542, 7701, and 7703 of Title 5 and section 4139 of Title 22, Foreign Relations and Intercourse, repealed sections 1207 and 1208 of Title 5, and enacted provisions set out as notes under sections 1201, 1211, and 5509 of Title 5. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1201 of Title 5 and Tables.

CODIFICATION

Section was formerly classified to section 7239 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (n). Pub. L. 108–136, § 3141(i)(3)(D), substituted ''December 5, 1999,'' for ''60 days after October 5, 1999,''.

§ 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 2601 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 the basis of 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(b)[1] of title 5 if the employee meets the requirements of section 5754(a)[1] 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 Secretary 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 de-

[1] See References in Text note below.

termines 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.

(Pub. L. 107–314, div. D, title XLVI, §4603, formerly Pub. L. 106–398, §1 [div. C, title XXXI, §3136], Oct. 30, 2000, 114 Stat. 1654, 1654A–458; renumbered Pub. L. 107–314, div. D, title XLVI, §4603, and amended Pub. L. 108–136, div. C, title XXXI, §3141(i)(4), Nov. 24, 2003, 117 Stat. 1777.)

REFERENCES IN TEXT

Section 5754 of title 5, referred to in subsec. (d)(2), was repealed and a new section 5754 relating to retention bonuses was enacted by Pub. L. 108–411, title I, §101(a)(1), Oct. 30, 2004, 118 Stat. 2305, 2307.

CODIFICATION

Section is comprised of section 4603 of Pub. L. 107–314. Subsec. (h) of section 4603 of Pub. L. 107–314 amended section 8905a of Title 5, Government Organization and Employees.

Section was formerly set out as a note under section 7274n of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–136, §3141(i)(4)(D)(i), substituted ''section 2601 of this title'' for ''section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)''.

Subsec. (g). Pub. L. 108–136, §3141(i)(4)(D)(ii), substituted ''section 2601(h) of this title'' for ''section 3143(h) of the National Defense Authorization Act for Fiscal Year 1997''.

Subsec. (i)(1)(A). Pub. L. 108–136, §3141(i)(4)(D)(i), substituted ''section 2601 of this title'' for ''section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)''.

§ 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;

(B) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and

(C) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.

(2) Employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive preference in any hiring of the Department of Energy (consistent with applicable employment seniority plans or practices of the Department of Energy and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1682)).

(3) Employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at such facilities or other facilities of the Department of Energy.

(4) The Department of Energy should provide relocation assistance to employees who are transferred to other Department of Energy facilities as a result of the plan.

(5) The Department of Energy should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).

(6) The Department of Energy should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with—

(A) programs carried out by the Secretary of Labor under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.];

(B) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (division D of Public Law 101–510; 10 U.S.C. 2391 note); and

(C) programs carried out by the Department of Commerce pursuant to title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.).

(d) Implementation

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,[1] 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.

(Pub. L. 107–314, div. D, title XLVI, § 4604, formerly Pub. L. 102–484, div. C, title XXXI, § 3161, Oct. 23, 1992, 106 Stat. 2644; Pub. L. 103–337, div. A, title X, § 1070(c)(2), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(7)(A), (f)(6)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 107–107, div. A, title X, § 1048(h)(1), Dec. 28, 2001, 115 Stat. 1229; renumbered Pub. L. 107–314, div. D, title XLVI, § 4604, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(i)(5), Nov. 24, 2003, 117 Stat. 1777.)

REFERENCES IN TEXT

Section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, referred to in subsec. (c)(2), is section 3152 of Pub. L. 101–189, div. C, title XXXI, Nov. 29, 1989, 103 Stat. 1682, which is not classified to the Code.

The Workforce Investment Act of 1998, referred to in subsec. (c)(6)(A), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Public Works and Economic Development Act of 1965, referred to in subsec. (c)(6)(C), is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552, as amended. Title II of the Act is classified generally to subchapter II (§ 3141 et seq.) of chapter 38 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 3121 of Title 42 and Tables.

The date of the enactment of this Act, referred to in subsec. (f)(1), meant Oct. 23, 1992, the date of enactment of Pub. L. 102–484, in this section as originally enacted. As renumbered by Pub. L. 108–136, this section is now part of Pub. L. 107–314, which was approved Dec. 2, 2002.

Executive Order Number 12344, referred to in subsec. (g)(1), is set out as a note under section 2511 of this title.

[1] See References in Text note below.

CODIFICATION

Section was formerly classified to section 7274h of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 3141(i)(5)(D)(i), struck out ''(hereinafter in this subtitle referred to as the 'Secretary')'' after ''Secretary of Energy''.

Subsec. (g). Pub. L. 108–136, § 3141(i)(5)(D)(ii), added subsec. (g).

2001—Subsec. (c)(6)(C). Pub. L. 107–107 substituted ''title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.)'' for ''title IX of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3241 et seq.)''.

1998—Subsec. (c)(6)(A). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(6)(A)], added subpar. (A) and struck out former subpar. (A) which read as follows: ''programs carried out by the Secretary of Labor under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998;''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(7)(A)], added subpar. (A) and struck out former subpar. (A) which read as follows: ''programs carried out by the Department of Labor pursuant to the Job Training Partnership Act (29 U.S.C. 1501 et seq.);''

1994—Pub. L. 103–337, § 1070(c)(2)(B), substituted ''workforce'' for ''work force'' in section catchline.

Subsec. (a). Pub. L. 103–337, § 1070(c)(2)(A), substituted ''workforce for'' for ''work force for'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–337, § 1070(c)(2)(A), substituted ''workforce'' for ''work force'' in introductory provisions.

Subsec. (c)(6)(B). Pub. L. 103–337, § 1070(c)(2)(C), substituted ''division D'' for ''Part D''.

Subsec. (d). Pub. L. 103–337, § 1070(c)(2)(A), substituted ''workforce'' for ''work force''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(7)(A)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(6)(A)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(c) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Oct. 23, 1992, and as if included in the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, as enacted.

§ 2705. Authority to provide certificate of commendation to Department of Energy and contractor employees for exemplary service in stockpile stewardship and security

(a) Authority to present certificate of commendation

The Secretary of Energy may present a certificate of commendation to any current or former employee of the Department of Energy, and any current or former employee of a Department contractor, whose service to the Department in matters relating to stockpile stewardship and security assisted the Department in furthering the national security interests of the United States.

(b) Certificate

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

For purposes of this section, the term ''Department of Energy'' includes any predecessor agency of the Department of Energy.

(Pub. L. 107–314, div. D, title XLVI, § 4605, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3195], Oct. 30, 2000, 114 Stat. 1654, 1654A–481; renumbered Pub. L. 107–314, div. D, title XLVI, § 4605, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(6), Nov. 24, 2003, 117 Stat. 1778.)

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.

PART B—EDUCATION AND TRAINING

§ 2721. Executive management training in Department of Energy

(a) Establishment of training program

The Secretary of Energy shall establish and implement a management training program for personnel of the Department of Energy involved in the management of atomic energy defense activities.

(b) Training provisions

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 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.

(Pub. L. 107–314, div. D, title XLVI, § 4621, formerly Pub. L. 101–189, div. C, title XXXI, § 3142, Nov. 29, 1989, 103 Stat. 1680; renumbered Pub. L. 107–314, div. D, title XLVI, § 4621, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(i)(8), Nov. 24, 2003, 117 Stat. 1778.)

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

2003—Pub. L. 108–136, § 3141(i)(8)(D), made technical amendment to section catchline.

§ 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).

(Pub. L. 107–314, div. D, title XLVI, § 4622, formerly Pub. L. 103–337, div. C, title XXXI, § 3131, Oct. 5, 1994, 108 Stat. 3085; renumbered Pub. L. 107–314, div. D, title XLVI, § 4622, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(i)(9), Nov. 24, 2003, 117 Stat. 1778.)

REFERENCES IN TEXT

Section 3101(a)(1) of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (b)(2), is section 3101(a)(1) of Pub. L. 103–337, div. C, title XXXI, Oct. 5, 1994, 108 Stat. 3074, which is not classified to the Code.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–136, § 3141(i)(9)(D)(i), substituted ''section 2521 of this title'' for ''section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1946; 42 U.S.C. 2121 note)''.

Subsec. (b)(2). Pub. L. 108–136, § 3141(i)(9)(D)(ii), inserted ''of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337)'' after ''section 3101(a)(1)''.

§ 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 pro-

vide 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 the following:

(1) Students pursuing graduate degrees in fields of science or engineering that are related to nuclear weapons engineering or to the science and technology base of the Department of Energy.

(2) Individuals engaged in postdoctoral studies in such fields.

(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.

(3) The Y–12 Plant, Oak Ridge, Tennessee.

(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.

(Pub. L. 107–314, div. D, title XLVI, §4623, formerly Pub. L. 104–106, div. C, title XXXI, §3140, Feb. 10, 1996, 110 Stat. 621; Pub. L. 106–65, div. C, title XXXI, §3162(a)–(d), Oct. 5, 1999, 113 Stat. 943; renumbered Pub. L. 107–314, div. D, title XLVI, §4623, by Pub. L. 108–136, div. C, title XXXI, §3141(i)(10), Nov. 24, 2003, 117 Stat. 1779.)

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

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. (b). Pub. L. 106–65, §3162(b), inserted ''are United States citizens who'' after ''program'' in introductory provisions.

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 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.

(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 preference 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 contrac-

tor 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.

(Pub. L. 107–314, div. D, title XLVI, § 4641, formerly Pub. L. 102–190, div. C, title XXXI, § 3131, Dec. 5, 1991, 105 Stat. 1571; renumbered Pub. L. 107–314, div. D, title XLVI, § 4641, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(i)(12), Nov. 24, 2003, 117 Stat. 1779.)

REFERENCES IN TEXT

Section 3101(9)(A) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, referred to in subsec. (e), is section 3101(9)(A) of Pub. L. 102–190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1564, which is not classified to the Code.

CODIFICATION

Section was formerly classified to section 7274d of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–136, § 3141(i)(12)(D), inserted ''of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190)'' after ''section 3101(9)(A)''.

§ 2732. Safety oversight and enforcement at defense nuclear facilities

(a) Safety at defense nuclear facilities

The Secretary of Energy shall take appropriate actions to ensure that—

(1) officials of the Department of Energy who are responsible for independent oversight of matters relating to nuclear safety at defense nuclear facilities and enforcement of nuclear safety standards at such facilities maintain independence from officials who are engaged in, or who are advising persons who are engaged in, management of such facilities;

(2) the independent, internal oversight functions carried out by the Department include activities relating to—

(A) the assessment of the safety of defense nuclear facilities;

(B) the assessment of the effectiveness of Department program offices in carrying out programs relating to the environment, safety, health, and security at defense nuclear facilities;

(C) the provision to the Secretary of oversight reports that—

(i) contain validated technical information; and

(ii) provide a clear analysis of the extent to which line programs governing defense nuclear facilities meet applicable goals for the environment, safety, health, and security at such facilities; and

(D) the development of clear performance standards to be used in assessing the adequacy of the programs referred to in subparagraph (C)(ii);

(3) the Department has a system for bringing issues relating to nuclear safety at defense nuclear facilities to the attention of the officials of the Department (including the Secretary of Energy) who have authority to resolve such issues in an adequate and timely manner; and

(4) an adequate number of qualified personnel of the Department are assigned to oversee matters relating to nuclear safety at defense nuclear facilities and enforce nuclear safety standards at such facilities.

(b) Report

Not later than January 5, 1995, the Secretary shall submit to Congress a report describing the following:

(1) 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).

(2) The actions in addition to the actions described under paragraph (1) that the Secretary could take in order to fulfill such requirements.

(3) The respective roles with regard to nuclear safety at defense nuclear facilities of the following officials:

(A) The Associate Deputy Secretary of Energy for Field Management.

(B) The Assistant Secretary of Energy for Defense Programs.

(C) The Assistant Secretary of Energy for Environmental Restoration and Waste Management.

(Pub. L. 107–314, div. D, title XLVI, § 4642, formerly Pub. L. 103–337, div. C, title XXXI, § 3163, Oct. 5, 1994, 108 Stat. 3097; renumbered Pub. L. 107–314, div. D, title XLVI, § 4642, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(i)(13), Nov. 24, 2003, 117 Stat. 1779.)

CODIFICATION

Section was formerly classified to section 7274m 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(i)(13)(D), substituted ''January 5, 1995,'' for ''90 days after October 5, 1994,''.

§ 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)(A) 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.

(Pub. L. 107–314, div. D, title XLVI, § 4643, formerly Pub. L. 102–484, div. C, title XXXI, § 3162, Oct. 23, 1992, 106 Stat. 2646; renumbered Pub. L. 107–314, div. D, title XLVI, § 4643, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(i)(14), Nov. 24, 2003, 117 Stat. 1779.)

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

2003—Subsec. (b)(6). Pub. L. 108–136, § 3141(i)(14)(D)(i), substituted ''October 23, 1993'' for ''1 year after October 23, 1992''.

Subsec. (c). Pub. L. 108–136, § 3141(i)(14)(D)(ii), substituted ''April 23, 1993,'' for ''180 days after October 23, 1992,''.

Subsec. (d). Pub. L. 108–136, § 3141(i)(14)(D)(iii), added subsec. (d).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 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.

(Pub. L. 107–314, div. D, title XLVI, § 4644, formerly Pub. L. 101–510, div. C, title XXXI, § 3138, Nov. 5, 1990, 104 Stat. 1834; Pub. L. 103–337, div. C, title XXXI, § 3138(b), Oct. 5, 1994, 108 Stat. 3087; renumbered Pub. L. 107–314, div. D, title XLVI, § 4644, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(i)(15), Nov. 24, 2003, 117 Stat. 1780.)

REFERENCES IN TEXT

Title XXXI of the National Defense Authorization Act for Fiscal Year 1991, referred to in subsec. (a), is title XXXI of div. C of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1824, as amended. For complete classification of title XXXI to the Code, see Tables.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(i)(15)(D)(i), made technical amendment to section catchline.

Subsec. (a). Pub. L. 108–136, § 3141(i)(15)(D)(ii), substituted ''title XXXI of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510)'' for ''this title''.

Subsec. (c)(2). Pub. L. 108–136, § 3141(i)(15)(D)(iii)(I), substituted ''May 5, 1991,'' for ''six months after the date of the enactment of this Act,''.

Subsec. (c)(3). Pub. L. 108–136, § 3141(i)(15)(D)(iii)(II), substituted ''May 5, 1992,'' for ''18 months after the date of the enactment of this Act,''.

1994—Subsec. (d). Pub. L. 103–337 added subsec. (d).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SUBCHAPTER VII—BUDGET AND FINANCIAL MANAGEMENT MATTERS

PART A—RECURRING NATIONAL SECURITY AUTHORIZATION PROVISIONS

§ 2741. Definitions

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.

(Pub. L. 107–314, div. D, title XLVII, § 4701, formerly div. C, title XXXVI, § 3620, Dec. 2, 2002, 116 Stat. 2756; renumbered div. D, title XLVII, § 4701, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781; Pub. L. 111–84, div. C, title XXXI, § 3118(a), (b), Oct. 28, 2009, 123 Stat. 2709.)

AMENDMENT OF PARAGRAPH (3)

Pub. L. 111–84, div. C, title XXXI, § 3118(b), Oct. 28, 2009, 123 Stat. 2709, provided that, effective Sept. 30, 2010, paragraph (3) of this section is amended by substituting ''$5,000,000'' for ''$10,000,000''.

CODIFICATION

Section was formerly classified to section 7386 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2009—Par. (3). Pub. L. 111–84, § 3118(a), substituted ''$10,000,000'' for ''$5,000,000''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. C, title XXXI, § 3118(b), Oct. 28, 2009, 123 Stat. 2709, provided that the amendment made by section 3118(b) is effective Sept. 30, 2010.

§ 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.

(Pub. L. 107–314, div. D, title XLVII, § 4702, formerly div. C, title XXXVI, § 3621, Dec. 2, 2002, 116 Stat. 2757; renumbered div. D, title XLVII, § 4702, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(D)(i), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 3141(j)(2)(D)(i), in introductory provisions, made technical amendment to reference in original act which appears in text as reference to sections 2750 and 2751 of this title.

§ 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.

(Pub. L. 107–314, div. D, title XLVII, § 4703, formerly div. C, title XXXVI, § 3622, Dec. 2, 2002, 116 Stat. 2757; renumbered div. D, title XLVII, § 4703, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 2743a. General plant projects

Plant or construction projects for which amounts are made available under this and subsequent appropriation Acts with a current estimated cost of less than $10,000,000 are considered for purposes of section 2743 of this title as a plant project for which the approved total estimated cost does not exceed the minor construction threshold and for purposes of section 2744 of this title as a construction project with a current estimated cost of less than a minor construction threshold.

(Pub. L. 111–8, div. C, title III, § 310, Mar. 11, 2009, 123 Stat. 627.)

REFERENCES IN TEXT

This Act, referred to in text, is div. C of Pub. L. 111–8, Mar. 11, 2009, 123 Stat. 601, known as the Energy and Water Development and Related Agencies Appropriations Act, 2009. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development and Related Agencies Appropriations Act, 2009, and also as part of the Omnibus Appropriations Act, 2009, and not as part of the Atomic Energy Defense Act which comprises this chapter.

§ 2744. Limits on construction projects

(a) Construction cost ceiling

Except as provided in subsection (b), construction on a construction project which is in support of national security programs of the Department of Energy and was authorized by a DOE national security authorization may not be started, and additional obligations in connection with the project above the total estimated cost may not be incurred, whenever the current estimated cost of the construction project exceeds by more than 25 percent the higher of—

(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.

(Pub. L. 107–314, div. D, title XLVII, § 4704, formerly div. C, title XXXVI, § 3623, Dec. 2, 2002, 116 Stat. 2758; renumbered div. D, title XLVII, § 4704, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

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 na-

tional 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.

(Pub. L. 107–314, div. D, title XLVII, § 4705, formerly div. C, title XXXVI, § 3624, Dec. 2, 2002, 116 Stat. 2758; renumbered div. D, title XLVII, § 4705, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386d of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 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.

(Pub. L. 107–314, div. D, title XLVII, § 4706, formerly div. C, title XXXVI, § 3625, Dec. 2, 2002, 116 Stat. 2759; renumbered div. D, title XLVII, § 4706, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), (D)(ii), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386e of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (a)(3)(B). Pub. L. 108–136, § 3141(j)(2)(D)(ii), made technical amendment to reference in original act which appears in text as reference to section 2747 of this title.

§ 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 construction 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.

(Pub. L. 107–314, div. D, title XLVII, § 4707, formerly div. C, title XXXVI, § 3626, Dec. 2, 2002, 116 Stat. 2759; renumbered div. D, title XLVII, § 4707, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), (D)(iii), Nov. 24, 2003, 117 Stat. 1781.)

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

2003—Subsec. (c). Pub. L. 108–136, § 3141(j)(2)(D)(iii), made technical amendment to reference in original act which appears in text as reference to section 2746(b)(2) of this title.

§ 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 au-

thorized in prior years, and land acquisition related thereto.

(Pub. L. 107–314, div. D, title XLVII, § 4708, formerly div. C, title XXXVI, § 3627, Dec. 2, 2002, 116 Stat. 2760; renumbered div. D, title XLVII, § 4708, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

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 athorization[1] for a fiscal year shall remain available to be obligated only until the end of that fiscal year.

(Pub. L. 107–314, div. D, title XLVII, § 4709, formerly div. C, title XXXVI, § 3628, Dec. 2, 2002, 116 Stat. 2760; renumbered div. D, title XLVII, § 4709, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386h of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 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.

(Pub. L. 107–314, div. D, title XLVII, § 4710, formerly div. C, title XXXVI, § 3629, Dec. 2, 2002, 116 Stat. 2760; renumbered div. D, title XLVII, § 4710, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), (D)(iv), Nov. 24, 2003, 117 Stat. 1781.)

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

2003—Subsec. (c). Pub. L. 108–136, § 3141(j)(2)(D)(iv), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

§ 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.

[1] So in original. Probably should be ''authorization''.

(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.

(Pub. L. 107–314, div. D, title XLVII, § 4711, formerly div. C, title XXXVI, § 3630, Dec. 2, 2002, 116 Stat. 2761; renumbered div. D, title XLVII, § 4711, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), (D)(v), Nov. 24, 2003, 117 Stat. 1781.)

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

2003—Subsec. (c). Pub. L. 108–136, § 3141(j)(2)(D)(v), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

§ 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.

(Pub. L. 107–314, div. D, title XLVII, § 4712, formerly div. C, title XXXVI, § 3631, Dec. 2, 2002, 116 Stat. 2762; renumbered div. D, title XLVII, § 4712, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), (D)(vi), Nov. 24, 2003, 117 Stat. 1781.)

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

2003—Pub. L. 108–136, § 3141(j)(2)(D)(vi), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

PART B—PENALTIES

§ 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.

(Pub. L. 107–314, div. D, title XLVII, § 4721, formerly Pub. L. 99–661, div. C, title I, § 3132, Nov. 14, 1986, 100 Stat. 4063; renumbered Pub. L. 107–314, div. D, title XLVII, § 4721, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(4), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7273a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(j)(4)(D), made technical amendment to section catchline.

§ 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.

(Pub. L. 107–314, div. D, title XLVII, § 4722, formerly Pub. L. 96–540, title II, § 211, Dec. 17, 1980, 94 Stat. 3203; renumbered Pub. L. 107–314, div. D, title XLVII, § 4722, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(5), Nov. 24, 2003, 117 Stat. 1781.)

REFERENCES IN TEXT

The Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981, referred to in text, is Pub. L. 96–540, Dec. 17, 1980, 94 Stat. 3197, which insofar as classified to the Code, enacted this section and section 2513 of this title.

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 7273 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:

Pub. L. 96–164, title II, § 211, Dec. 29, 1979, 93 Stat. 1264.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(j)(5)(C), made technical amendment to section catchline and substituted ''the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96–540) or any other Act'' for ''this or any other Act'' in text.

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.

(Pub. L. 107–314, div. D, title XLVII, § 4731, formerly Pub. L. 95–509, title II, § 208, Oct. 24, 1978, 92 Stat. 1779; renumbered Pub. L. 107–314, div. D, title XLVII, § 4731, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(7), Nov. 24, 2003, 117 Stat. 1782.)

CODIFICATION

Section was formerly classified to section 7271 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(j)(7)(C), inserted section catchline and struck out former catchline.

SUBCHAPTER VIII—ADMINISTRATIVE MATTERS

PART A—CONTRACTS

§ 2781. Costs not allowed under covered contracts

(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 418b of title 41.

(2) In any regulations implementing subsection (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.

(Pub. L. 107–314, div. D, title XLVIII, § 4801, formerly Pub. L. 99–145, title XV, § 1534, Nov. 8, 1985, 99 Stat. 774; Pub. L. 100–180, div. C, title III, § 3131(a), Dec. 4, 1987, 101 Stat. 1238; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4801, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(k)(2), Nov. 24, 2003, 117 Stat. 1783.)

CODIFICATION

Section was formerly classified to section 7256a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(k)(2)(D)(i), made technical amendment to section catchline.

Subsec. (b)(1). Pub. L. 108–136, § 3141(k)(2)(D)(ii), substituted ''November 8, 1985,'' for ''the date of the enactment of this Act,'' in the original, which for purposes of codification had been changed to ''November 8, 1985,'' thus requiring no change in text.

1987—Subsec. (b). Pub. L. 100–180 designated existing provisions as par. (1) and added par. (2).

REGULATIONS

Pub. L. 100–180, div. C, title I, § 3131(b), Dec. 4, 1987, 101 Stat. 1239, provided that: ''Regulations to implement paragraph (2) of section 1534(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986 (as added by subsection (a)) [50 U.S.C. 2781(b)(2)] shall be prescribed not later than 90 days after the date of the enactment of this Act [Dec. 4, 1987]. Such regulations shall apply as if included in the original regulations prescribed under such section.''

§ 2782. Prohibition and report on bonuses to contractors operating defense nuclear facilities

(a) Prohibition

The Secretary of Energy may not provide any bonuses, award fees, or other form of performance- or production-based awards to a contractor operating a Department of Energy defense nuclear facility unless, in evaluating the performance or production under the contract, the Secretary considers the contractor's compliance with all applicable environmental, safety, and health statutes, regulations, and practices for determining both the size of, and the contractor's qualification for, such bonus, award fee, or other award. The prohibition in this subsection applies with respect to contracts entered into, or contract options exercised, after November 29, 1989.

(b) Report on Rocky Flats bonuses

The Secretary of Energy shall investigate the payment, from 1981 to 1988, of production bonuses to Rockwell International, the contractor operating the Rocky Flats Plant (Golden, Colorado), for purposes of determining whether the payment of such bonuses was made under fraudulent circumstances. Not later than May 29, 1990, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of that investigation, including the Secretary's conclusions and recommendations.

(c) "Department of Energy defense nuclear facility" defined

In this section, the term ''Department of Energy defense nuclear facility'' has the meaning given such term by section 2286g of title 42.

(d) Regulations

The Secretary of Energy shall promulgate regulations to implement subsection (a) not later than March 1, 1990.

(Pub. L. 107–314, div. D, title XLVIII, § 4802, formerly Pub. L. 101–189, div. C, title XXXI, § 3151, Nov. 29, 1989, 103 Stat. 1682; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4802, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(k)(3), Nov. 24, 2003, 117 Stat. 1783.)

CODIFICATION

Section was formerly classified to section 7256b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(k)(3)(D)(i), made technical amendment to section catchline.

Subsec. (a). Pub. L. 108–136, § 3141(k)(3)(D)(ii), substituted ''November 29, 1989'' for ''the date of the enactment of this Act'' in the original, which for purposes of codification had been changed to ''November 29, 1989'' thus requiring no change in text.

Subsec. (b). Pub. L. 108–136, § 3141(k)(3)(D)(iii), substituted ''May 29, 1990,'' for ''6 months after November 29, 1989,''.

Subsec. (d). Pub. L. 108–136, § 3141(k)(3)(D)(iv), substituted ''March 1, 1990'' for ''90 days after November 29, 1989''.

§ 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

[1] See References in Text note below.

U.S.C. App. 781–790),[1] 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).

(Pub. L. 107–314, div. D, title XLVIII, § 4803, formerly Pub. L. 101–510, div. C, title XXXI, § 3141, Nov. 5, 1990, 104 Stat. 1837; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4803, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(k)(4), Nov. 24, 2003, 117 Stat. 1783.)

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. 428, 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.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(k)(4)(D)(i), made technical amendment to section catchline.

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.

§ 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.

(Pub. L. 107–314, div. D, title XLVIII, § 4804, as added Pub. L. 109–364, div. C, title XXXI, § 3118, Oct. 17, 2006, 120 Stat. 2509.)

PART B—RESEARCH AND DEVELOPMENT

§ 2791. Laboratory-directed research and development programs

(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.

(Pub. L. 107–314, div. D, title XLVIII, § 4811, formerly Pub. L. 101–510, div. C, title XXXI, § 3132, Nov. 5, 1990, 104 Stat. 1832; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4811, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(k)(6), Nov. 24, 2003, 117 Stat. 1784.)

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

2003—Pub. L. 108–136, § 3141(k)(6)(D), made technical amendment to section catchline.

§ 2791a. Laboratory-directed research and development

Of the funds made available by the Department of Energy for activities at government-owned, contractor-operated laboratories funded in this Act or subsequent Energy and Water Development Appropriations Acts, the Secretary may authorize a specific amount, not to exceed 8 percent of such funds, to be used by such laboratories for laboratory directed research and development: *Provided*, That the Secretary may also authorize a specific amount not to exceed 4 percent of such funds, to be used by the plant manager of a covered nuclear weapons production plant or the manager of the Nevada Site Office for plant or site directed research and development: *Provided further*, That notwithstanding Department of Energy order 413.2A, dated January 8, 2001, beginning in fiscal year 2006 and thereafter, all DOE laboratories may be eligible for laboratory directed research and development funding.

(Pub. L. 111–8, div. C, title III, § 308, Mar. 11, 2009, 123 Stat. 626.)

REFERENCES IN TEXT

This Act, referred to in text, is div. C of Pub. L. 111–8, Mar. 11, 2009, 123 Stat. 601, known as the Energy and Water Development and Related Agencies Appropriations Act, 2009. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the Atomic Energy Defense Act which comprises this chapter.

SIMILAR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 111–85, title III, § 307, Oct. 28, 2009, 123 Stat. 2872.

Pub. L. 110–161, div. C, title III, § 309, Dec. 26, 2007, 121 Stat. 1968.

Pub. L. 109–103, title III, § 311, Nov. 19, 2005, 119 Stat. 2280.

§ 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 sta-

bilization 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 environmental restoration mission, waste management mission, or materials stabilization mission, as the case may be, of the Department of Energy.

(b) Limitation in fiscal year 1998 pending submittal 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.

(Pub. L. 107–314, div. D, title XLVIII, § 4812, formerly Pub. L. 105–85, div. C, title XXXI, § 3137, Nov. 18, 1997, 111 Stat. 2038; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4812, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(k)(7)(A), Nov. 24, 2003, 117 Stat. 1784.)

CODIFICATION

Section is comprised of section 4812 of Pub. L. 107–314. Subsec. (c) of section 4812 of Pub. L. 107–314 amended section 2793 of this title.

Section was formerly classified to section 7257c 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(k)(7)(A)(iv), made technical amendment to reference in original act which appears in text as reference to section 2793(b) of this title.

Subsec. (d). Pub. L. 108–136, § 3141(k)(7)(A)(v)(II), made technical amendment to reference in original act which appears in text as reference to section 2791(c) of this title.

Pub. L. 108–136, § 3141(k)(7)(A)(v)(I), made technical amendment to reference in original act which appears in text as reference to section 2793(b)(1) of this title.

Subsec. (e). Pub. L. 108–136, § 3141(k)(7)(A)(vi), made technical amendment to reference in original act which appears in text as reference to 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.

(Pub. L. 107–314, div. D, title XLVIII, § 4812A, formerly Pub. L. 104–201, div. C, title XXXI, § 3136, Sept. 23, 1996, 110 Stat. 2830; Pub. L. 107–314, div. D, title XLVIII, § 4812(c), formerly Pub. L. 105–85, div. C, title XXXI, § 3137(c), Nov. 18, 1997, 111 Stat. 2039, renumbered Pub. L. 107–314, div. D, title XLVIII, § 4812(c), by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(7)(A)(i)–(iii), Nov. 24, 2003, 117 Stat. 1784; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4812A, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(k)(7)(B), Nov. 24, 2003, 117 Stat. 1784.)

REFERENCES IN TEXT

Section 3101 of the National Defense Authorization Act for Fiscal Year 1997, referred to in subsec. (a), is section 3101 of Pub. L. 104–201, div. C, title XXXI, Sept. 23, 1996, 110 Stat. 2820, which is not classified to the Code.

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

2003—Subsec. (a). Pub. L. 108–136, § 3141(k)(7)(B)(iv), inserted ''of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201)'' after ''section 3101''.

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

(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) 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 nonmilitary applications; and

(C) that either—

(i)(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)[1] 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

(ii)(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[1] of title 10; and

(II) has not been expressly deleted from such list by such a plan subsequently submitted to Congress by the Secretary.

(2) The term ''cooperative research and development agreement'' has the meaning given that term by section 3710a(d) of title 15.

(3) 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; or

(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.

(Pub. L. 107–314, div. D, title XLVIII, § 4813, formerly Pub. L. 102–190, div. C, title XXXI, § 3136, Dec. 5, 1991, 105 Stat. 1577; Pub. L. 103–35, title II, § 203(b)(3), May 31, 1993, 107 Stat. 102; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4813, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(8), Nov. 24, 2003, 117 Stat. 1785.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 6683 of title 42, referred to in subsec. (b)(1)(C)(i)(I), was omitted from the Code.

Section 2506 of title 10, referred to in subsec. (b)(1)(C)(ii)(I), was amended generally by Pub. L. 104–201, div. A, title VIII, § 829(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. (b)(4), is set out as a note under section 2511 of this title.

CODIFICATION

Section was formerly classified to section 2123 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

1993—Subsec. (b)(1)(C)(ii)(I). Pub. L. 103–35 substituted ''section 2506 of title 10'' for ''section 2522 of title 10''.

§ 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).

(Pub. L. 107–314, div. D, title XLVIII, § 4814, formerly Pub. L. 105–85, div. C, title XXXI, § 3155, Nov. 18, 1997, 111 Stat. 2044; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4814, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(k)(9), Nov. 24, 2003, 117 Stat. 1785.)

REFERENCES IN TEXT

Title XXXI of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (c), is title XXXI of div. C of Pub. L. 105–85, Nov. 18, 1997, 111 Stat. 2023, as amended. For complete classification of title XXXI to the Code, see Tables.

CODIFICATION

Section was formerly set out as a note under section 7381 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–136, § 3141(k)(9)(D), substituted ''title XXXI of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85)'' for ''this title''.

PART C—FACILITIES MANAGEMENT

§ 2811. Transfers of real property at certain Department of Energy facilities

(a) Transfer regulations

(1) The Secretary of Energy shall prescribe regulations for the transfer by sale or lease of real property at Department of Energy defense nuclear facilities for the purpose of permitting the economic development of the property.

(2) The Secretary of Energy may not transfer real property under the regulations prescribed under paragraph (1) until—

(A) the Secretary submits a notification of the proposed transfer to the congressional defense committees; and

(B) a period of 30 days has elapsed following the date on which the notification is submitted.

(b) Indemnification

(1) Except as provided in paragraph (3) and subject to subsection (c), in the sale or lease of real property pursuant to the regulations prescribed under subsection (a), the Secretary of Energy may hold harmless and indemnify a person or entity described in paragraph (2) against any claim for injury to person or property that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located. Before entering into any agreement for such a sale or lease, the Secretary shall notify the person or entity that the Secretary has authority to provide indemnification to the person or entity under this subsection. The Secretary shall include in any agreement for such a sale or lease a provision stating whether indemnification is or is not provided.

(2) Paragraph (1) applies to the following persons and entities:

(A) Any State that acquires ownership or control of real property of a defense nuclear facility.

(B) Any political subdivision of a State that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(D) Any successor, assignee, transferee, lender, or lessee 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.

(Pub. L. 107–314, div. D, title XLVIII, § 4831, formerly Pub. L. 105–85, div. C, title XXXI, § 3158, Nov. 18, 1997, 111 Stat. 2046; Pub. L. 108–7, div. D, title V, § 506, Feb. 20, 2003, 117 Stat. 158; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4831, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(11), Nov. 24, 2003, 117 Stat. 1785; Pub. L. 108–137, title V, § 504(a), Dec. 1, 2003, 117 Stat. 1868.)

CODIFICATION

Section was formerly classified to section 7274q of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (b)(2)(D). Pub. L. 108–137, § 504(a), which directed that subsec. (b)(2) of section 3158 of the National Defense Authorization Act for Fiscal Year 1998 (42 U.S.C. 7274q(b)(2)) be amended by adding a subpar. (D), was executed to that section as renumbered by Pub. L. 108–136 to reflect the probable intent of Congress. See Amendment note below and Effective Date of 2003 Amendment note below.

Pub. L. 108–7, which directed the amendment of ''Title 42 U.S.C. 7274g'' by adding subpar. (D) to subsec. (b)(2), was probably intended to amend section 3158 of Pub. L. 105–85, which was formerly classified to section 7274q of title 42 prior to renumbering and transfer to this section by Pub. L. 108–136. However, the amendment was not executed in view of the enactment of section 504 of Pub. L. 108–137 which added a substantially identical subpar. (D). See Amendment note above and Effective Date of 2003 Amendment note below.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–137, title V, § 504(b), Dec. 1, 2003, 117 Stat. 1868, provided that: ''The amendment made by section 506 [probably means section 506 of Pub. L. 108–7, see 2003 Amendment note above], as amended by this section [section 504 of Pub. L. 108–137 did not amend section 506 of Pub. L. 108–7, see 2003 Amendment note above], is effective as of the date of enactment of the National Defense Authorization Act for Fiscal Year 1998 [Nov. 18, 1997].''

§ 2812. Engineering and manufacturing research, development, and demonstration by plant managers of certain nuclear weapons production plants

(a) Authority for programs at nuclear weapons productions 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.

(Pub. L. 107–314, div. D, title XLVIII, § 4832, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3156], Oct. 30, 2000, 114 Stat. 1654, 1654A–467; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4832, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(12), Nov. 24, 2003, 117 Stat. 1785.)

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. 2959, 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.

''(2) The Y–12 Plant, Oak Ridge, Tennessee.

''(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:

Pub. L. 108–137, title III, § 308, Dec. 1, 2003, 117 Stat. 1861.

Pub. L. 108–7, div. D, title III, § 308, Feb. 20, 2003, 117 Stat. 154.

Pub. L. 107–66, title III, § 309, Nov. 12, 2001, 115 Stat. 509.

Pub. L. 106–377, § 1(a)(2) [title III, § 310], Oct. 27, 2000, 114 Stat. 1441, 1441A–80.

§ 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 disposal 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.

(6) The disposal of materials at the National Electronics Recycling Center, Oak Ridge, Tennessee that are 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.

(Pub. L. 107–314, div. D, title XLVIII, § 4833, formerly Pub. L. 105–85, div. C, title XXXI, § 3138, Nov. 18, 1997, 111 Stat. 2039; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4833, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(k)(13), Nov. 24, 2003, 117 Stat. 1786.)

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

2003—Subsec. (d). Pub. L. 108–136, § 3141(k)(13)(D), substituted ''subchapter II of chapter 5 and section 549 of title 40'' for ''sections 202 and 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483 and 484(j))''.

PART D—OTHER MATTERS

§ 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.

(Pub. L. 107–314, div. D, title XLVIII, § 4851, formerly Pub. L. 105–85, div. C, title XXXI, § 3153(f), Nov. 18, 1997, 111 Stat. 2044; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4851, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(k)(15), Nov. 24, 2003, 117 Stat. 1786.)

CODIFICATION

Section was formerly set out as a note under section 7274h of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Pub. L. 108–136, § 3141(k)(15)(C)(iii), substituted ''section 2704(c)(6) of this title'' for ''section 3161(c)(6) of the National Defense Authorization Act of 1993 (42 U.S.C. 7274h(c)(6))''.

Pub. L. 108–136, § 3141(k)(15)(C)(i), (ii), inserted section catchline and directed striking subsec. heading ''Semiannual reports 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.

(Pub. L. 107–314, div. D, title XLVIII, § 4852, formerly Pub. L. 104–201, div. C, title XXXI, § 3144, Sept. 23, 1996, 110 Stat. 2838; renumbered Pub. L. 107–314, div. D, title XLVIII, § 4852, by Pub. L. 108–136, div. C, title XXXI, § 3141(k)(16), Nov. 24, 2003, 117 Stat. 1786.)

CHAPTER 43—PREVENTING WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM

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2921. Statement of policy.
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SUBCHAPTER III—OFFICE OF THE UNITED STATES COORDINATOR FOR THE PREVENTION OF WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM

2931. Office of the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism.
2932. Sense of Congress on United States-Russia cooperation and coordination on the prevention of weapons of mass destruction proliferation and terrorism.

§ 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.

(Pub. L. 110–53, title XVIII, §1801, Aug. 3, 2007, 121 Stat. 491.)

§ 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.

(Pub. L. 110–53, title XVIII, §1802, Aug. 3, 2007, 121 Stat. 491.)

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.

Section 3101(a)(2) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), referred to in par. (1)(B), is not classified to the Code.

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.

(3) Implementing the recommendations of the Government Accountability Office (GAO) in the September 2006 report titled ''Better Controls Needed to Plan and Manage Proliferation Security Initiative Activities'' (GAO–06–937C) regarding the following:

(A) The Department of Defense and the Department of State should establish clear PSI roles and responsibilities, policies and procedures, interagency communication mechanisms, documentation requirements, and indicators to measure program results.

(B) The Department of Defense and the Department of State should develop a strategy to work with PSI-participating countries to resolve issues that are impediments to conducting successful PSI interdictions.

(4) Establishing a multilateral mechanism to increase coordination, cooperation, and compliance among PSI-participating countries.

(b) Budget submission

(1) In general

Each fiscal year in which activities are planned to be carried out under the PSI, the President shall include in the budget request for each participating United States Government agency or department for that fiscal year, a description of the funding and the activities for which the funding is requested for each such agency or department.

(2) Report

Not later than the first Monday in February of each year in which the President submits a budget request described in paragraph (1), the Secretary of Defense and the Secretary of State shall submit to Congress a comprehensive joint report setting forth the following:

(A) A 3-year plan, beginning with the fiscal year for the budget request, that specifies the amount of funding and other resources to be provided by the United States for PSI-related activities over the term of the plan, including the purposes for which such funding and resources will be used.

(B) For the report submitted in 2008, a description of the PSI-related activities carried out during the 3 fiscal years preceding the year of the report, and for the report submitted in 2009 and each year thereafter, a description of the PSI-related activities carried out during the fiscal year preceding the year of the report. The description shall include, for each fiscal year covered by the report—

(i) the amounts obligated and expended for such activities and the purposes for which such amounts were obligated and expended;

(ii) a description of the participation of each department or agency of the United States Government in such activities;

(iii) a description of the participation of each foreign country or entity in such activities;

(iv) a description of any assistance provided to a foreign country or entity participating in such activities in order to secure such participation, in response to such participation, or in order to improve the quality of such participation; and

(v) such other information as the Secretary of Defense and the Secretary of State determine should be included to keep Congress fully informed of the operation and activities of the PSI.

(3) Classification

The report required by paragraph (2) shall be in an unclassified form but may include a classified annex as necessary.

(c) Implementation report

Not later than 180 days after August 3, 2007, the President shall transmit to the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Foreign Relations of the Senate a report on the implementation of this section. The report shall include—

(1) the steps taken to implement the recommendations described in paragraph (3) of subsection (a); and

(2) the progress made toward implementing the matters described in paragraphs (1), (2), and (4) of subsection (a).

(d) GAO reports

The Government Accountability Office shall submit to Congress, for each of fiscal years 2007, 2009, and 2011, a report with its assessment of the progress and effectiveness of the PSI, which shall include an assessment of the measures referred to in subsection (a).

(Pub. L. 110–53, title XVIII, § 1821, Aug. 3, 2007, 121 Stat. 493.)

ASSIGNMENT OF FUNCTIONS UNDER SECTION 1821(c) OF THE IMPLEMENTING RECOMMENDATIONS OF THE 9/11 COMMISSION ACT OF 2007

Memorandum of President of the United States, Mar. 28, 2008, 73 F.R. 19957, provided:

Memorandum for the Secretary of State

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 1821(c) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53).

In the performance of your responsibility under this memorandum, you shall, as appropriate, consult the heads of other departments and agencies.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 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.

(2) Assistance under chapters 4 (22 U.S.C. 2346 et seq.) and 5 (22 U.S.C. 2347 et seq.) of part II of the Foreign Assistance Act of 1961.

(3) Drawdown of defense[1] excess defense articles and services under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j).

(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.

(Pub. L. 110–53, title XVIII, § 1822, Aug. 3, 2007, 121 Stat. 495.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (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.

(Pub. L. 110–53, title XVIII, § 1831, Aug. 3, 2007, 121 Stat. 496.)

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.

Subtitle E, referred to in text, is subtitle E (§§ 1851–1859) of title XVIII of Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 501, which is not classified to the Code.

[1] So in original. The word ''defense'' probably should not appear before ''excess''.

[1] See References in Text below.

§ 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:

(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.

(Pub. L. 110–53, title XVIII, § 1832, Aug. 3, 2007, 121 Stat. 497.)

§ 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.

(Pub. L. 110–53, title XVIII, § 1833, Aug. 3, 2007, 121 Stat. 497.)

SUBCHAPTER III—OFFICE OF THE UNITED STATES COORDINATOR FOR THE PREVENTION OF WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM

§ 2931. Office of the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism

(a) Establishment

There is established within the Executive Office of the President an office to be known as 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'').

(b) Officers

(1) United States Coordinator

The head of the Office shall be the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (in this section referred to as the ''Coordinator'').

(2) Deputy United States Coordinator

There shall be a Deputy United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (in this section referred to as the ''Deputy Coordinator''), who shall—

(A) assist the Coordinator in carrying out the responsibilities of the Coordinator under this subchapter; and

(B) serve as Acting Coordinator in the absence of the Coordinator and during any vacancy in the office of Coordinator.

(3) Appointment

The Coordinator and Deputy Coordinator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be responsible on a full-time basis for the duties and responsibilities described in this section.

(4) Limitation

No person shall serve as Coordinator or Deputy Coordinator while serving in any other position in the Federal Government.

(5) Access by Congress

The establishment of the Office of the Coordinator within the Executive Office of the President shall not be construed as affecting access by the Congress or committees of either House to—

(A) information, documents, and studies in the possession of, or conducted by or at the direction of, the Coordinator; or

(B) personnel of the Office of the Coordinator.

(c) Duties

The responsibilities of the Coordinator shall include the following:

(1) Serving as the principal advisor to the President on all matters relating to the prevention of weapons of mass destruction (WMD) proliferation and terrorism.

(2) Formulating a comprehensive and well-coordinated United States strategy and policies 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.

(Pub. L. 110–53, title XVIII, §1841, Aug. 3, 2007, 121 Stat. 498.)

REFERENCES IN TEXT

Subtitle E of this title, referred to in subsecs. (c)(2)(H) and (e), is subtitle E (§§1851–1859) of title XVIII of Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 501, which is not classified to the Code.

This chapter, referred to in subsec. (d)(1), 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.

[1] See References in Text note below.

CODIFICATION

Section is comprised of section 1841 of Pub. L. 110–53. Subsec. (g) of section 1841 of Pub. L. 110–53 amended section 402 of this title.

§ 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.

(Pub. L. 110–53, title XVIII, § 1842, Aug. 3, 2007, 121 Stat. 500.)