

Subsec. (h). Pub. L. 116-283, §1081(a)(7), which directed the substitution of “Low Intensity” for “Low-Intensity” in subsec. (g) as redesignated by section 1051 of Pub. L. 116-283, was executed by making substitution in subsec. (h) as redesignated by section 1051, to reflect the probable intent of Congress.

Pub. L. 116-283, §1051(3), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 116-283, §1051(3), redesignated subsec. (h) as (i).

2019—Subsec. (a). Pub. L. 116-92, §1041(1), inserted “authorized” before “ongoing military operations”.

Subsec. (d)(2)(A). Pub. L. 116-92, §1041(2)(A), inserted “and a description of the authorized ongoing operation” before period at end.

Subsec. (d)(2)(B) to (D). Pub. L. 116-92, §1041(2)(B), (C), added subpars. (B) and (C), redesignated former subpar. (C) as (D), and struck out former subpar. (B) which read as follows: “The type of support provided or to be provided to the recipient of the funds.”

Subsec. (d)(2)(E), (F). Pub. L. 116-92, §1041(2)(D), added subpars. (E) and (F).

2017—Subsecs. (g), (h). Pub. L. 115-91, §1031(a), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h)(1). Pub. L. 115-91, §1031(b)(1), substituted “120 days after the last day of each fiscal year” for “March 1 each year”.

Subsec. (h)(2). Pub. L. 115-91, §1031(b)(2), substituted “six months after the date of the submittal of the report most recently submitted under paragraph (1)” for “September 1 each year” and inserted “under this paragraph” after “in which the report”.

Statutory Notes and Related Subsidiaries

CHIEF OF MISSION CONCURRENCE

Pub. L. 117-81, div. E, title LVII, §5703, Dec. 27, 2021, 135 Stat. 2382, provided that: “In the course of a chief of mission providing concurrence to the exercise of the authority pursuant to section 127e of title 10, United States Code, or section 1202 of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115-91; 131 Stat. 1639]—

“(1) each relevant chief of mission shall inform and consult in a timely manner with relevant individuals at relevant missions or bureaus of the Department of State; and

“(2) the Secretary of State shall take such steps as may be necessary to ensure that such relevant individuals have the security clearances necessary and access to relevant compartmented and special programs to so consult in a timely manner with respect to such concurrence.”

§ 127f. Expenditure of funds for clandestine activities that support operational preparation of the environment and non-conventional assisted recovery capabilities

(a) AUTHORITY.—(1) Amounts appropriated or otherwise made available for the Department of Defense for operation and maintenance, Defense-wide, may be used for any purpose the Secretary of Defense determines to be proper—

(A) for operational preparation of the environment for operations of a confidential nature; or

(B) to establish, develop, and maintain non-conventional assisted recovery capabilities to facilitate the recovery of United States military and civilian personnel, or other individuals, who become isolated or separated.

(2) Such a determination is final and conclusive upon the accounting officers of the United States. The Secretary may certify the amount of any such expenditure authorized by the Secretary that the Secretary considers advisable

not to specify, and the Secretary’s certificate is sufficient voucher for the expenditure of that amount.

(b) AUTHORIZED ACTIVITIES.—Activities authorized by subsection (a) may, in limited and special circumstances as determined by the Secretary of Defense, include the provision of support to foreign forces, irregular forces, groups, or individuals to conduct operational preparation of the environment and to conduct or support operations to establish, develop, and maintain non-conventional assisted recovery capabilities to facilitate the recovery of United States military and civilian personnel, or other individuals, who become isolated or separated. Such support may include limited amounts of equipment, supplies, training, transportation, or other logistical support or funding.

(c) PROCEDURES.—

(1) IN GENERAL.—The authority in this section shall be exercised in accordance with such procedures as the Secretary of Defense shall establish for purposes of this section.

(2) ELEMENTS.—The procedures required under paragraph (1) shall establish, at a minimum, each of the following:

(A) Policy, strategy, or other guidance for the execution of, and constraints within, activities conducted under this section.

(B) The processes through which activities conducted under this section are to be developed, validated, and coordinated, as appropriate, with relevant Federal entities.

(C) The processes through which legal reviews and determinations are made to comply with the authority in this section and ensure that the exercise of such authority is consistent with the national security interests of the United States.

(D) The processes by which the Department of Defense shall keep the congressional defense committees fully and currently informed of—

(i) the requirements for the use of the authority in this section; and

(ii) activities conducted under such authority.

(3) NOTICE TO CONGRESS.—The Secretary shall notify the congressional defense committees of any material change to the procedures established under paragraph (1).

(d) LIMITATIONS.—The Secretary of Defense—

(1) may expend up to \$40,000,000 in any fiscal year for the purposes described in subsection (a); and

(2) may not delegate the authority under this section with respect to any expenditure in excess of \$250,000.

(e) EXCLUSION OF INTELLIGENCE ACTIVITIES.—(1) This section does not constitute authority to conduct, or expend funds for, intelligence, counterintelligence, or intelligence-related activities.

(2) In this subsection, the terms “intelligence” and “counterintelligence” have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(f) QUARTERLY BRIEFING.—On a quarterly basis, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict,

in coordination with elements of the Department of Defense that the Assistant Secretary determines appropriate, shall provide to the congressional defense committees a briefing outlining the clandestine activities carried out pursuant to subsection (a) during the period covered by the briefing, including—

- (1) an update on such activities carried out in each geographic combatant command and a description of how such activities support the respective theater campaign plan;
- (2) an overview of the authorities and legal issues, including limitations, relating to such activities; and
- (3) any other matters the Assistant Secretary considers appropriate.

(g) ANNUAL REPORT.—Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees a report on expenditures made under this section during the fiscal year preceding the year in which the report is submitted. Each report shall include, for each expenditure under this section during the fiscal year covered by such report—

- (1) a description of activities carried out for the purposes described in subsection (a);
- (2) the amount of such expenditures;
- (3) an identification of the type of recipients to receive support, including foreign forces, irregular forces, groups or individuals, as appropriate;
- (4) the total amount of funds obligated for such expenditures in prior fiscal years; and
- (5) any other matters the Secretary considers appropriate.

(h) NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.—Funding used to establish, develop, and maintain non-conventional assisted recovery capabilities under this section may only be obligated and expended with the concurrence of the relevant Chief of Mission or Chiefs of Mission.

(i) OVERSIGHT BY ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS AND LOW INTENSITY CONFLICT.—The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall have primary responsibility within the Office of the Secretary of Defense for oversight of policies and programs authorized by this section.

(j) OPERATIONAL PREPARATION OF THE ENVIRONMENT DEFINED.—In this section, the term “operational preparation of the environment” means the conduct of activities in likely or potential operational areas to set conditions for mission execution.

(Added Pub. L. 116-283, div. A, title X, §1052(a), Jan. 1, 2021, 134 Stat. 3849; amended Pub. L. 117-81, div. A, title X, §1093(b), Dec. 27, 2021, 135 Stat. 1935; Pub. L. 117-263, div. A, title XVI, §1621, Dec. 23, 2022, 136 Stat. 2933; Pub. L. 118-31, div. A, title XII, §1221(a), Dec. 22, 2023, 137 Stat. 451.)

Editorial Notes

AMENDMENTS

2023—Pub. L. 118-31, §1221(a)(1), inserted “and non-conventional assisted recovery capabilities” after “environment” in section catchline.

Subsec. (a). Pub. L. 118-31, §1221(a)(2), substituted par. (1) for “Subject to subsections (b) through (d), the Secretary of Defense may expend up to \$15,000,000 in any fiscal year for clandestine activities for any purpose the Secretary determines to be proper for preparation of the environment for operations of a confidential nature.” and designated remainder of subsec. (a) as par. (2).

Subsec. (b). Pub. L. 118-31, §1221(a)(3), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: “Funds for expenditures under this section in a fiscal year shall be derived from amounts authorized to be appropriated for that fiscal year for operation and maintenance, Defense-wide.”

Subsec. (c). Pub. L. 118-31, §1221(a)(5), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 118-31, §1221(a)(6), substituted “Limitations” for “Limitation on Delegation” in heading and “The Secretary of Defense—”, par. (1), and “(2) may not delegate” for “The Secretary of Defense may not delegate” in text.

Pub. L. 118-31, §1221(a)(4), redesignated subsec. (c) as (d).

Subsecs. (e) to (g). Pub. L. 118-31, §1221(a)(4), redesignated subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (g)(1) to (5). Pub. L. 118-31, §1221(a)(7), added pars. (1) to (4), redesignated former par. (4) as (5), and struck out former pars. (1) to (3) which read as follows:

- “(1) the amount and date of such expenditure;
- “(2) a detailed description of the purpose for which such expenditure was made;
- “(3) an explanation why other authorities available to the Department of Defense could not be used for such expenditure; and”.

Subsec. (h). Pub. L. 118-31, §1221(a)(4), redesignated subsec. (g) as (h).

Subsecs. (i), (j). Pub. L. 118-31, §1221(a)(8), added subsecs. (i) and (j).

2022—Subsecs. (e) to (g). Pub. L. 117-263 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2021—Subsec. (f). Pub. L. 117-81 added subsec. (f).

§ 128. Control and physical protection of special nuclear material: limitation on dissemination of unclassified information

(a)(1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, the Secretary of Defense, with respect to special nuclear materials, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

- (A) illegal production of nuclear weapons, or
- (B) theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the