

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

likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in paragraph (1)—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) illegal production of nuclear weapons, or

(ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(b) Nothing in this section shall be construed to authorize the Secretary to withhold, or to authorize the withholding of, information from the appropriate committees of the Congress.

(c) Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5.

(d) Information that the Secretary prohibits to be disseminated pursuant to subsection (a) that is provided to a State or local government shall remain under the control of the Department of Defense, and a State or local law authorizing or requiring a State or local government to disclose such information shall not apply to such information.

(Added Pub. L. 100-180, div. A, title XI, §1123(a), Dec. 4, 1987, 101 Stat. 1149; amended Pub. L. 101-510, div. A, title XIII, §1311(1), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 108-136, div. A, title X, §1031(a)(4), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 114-328, div. A, title XVI, §1662(a)(1), (2), Dec. 23, 2016, 130 Stat. 2614.)

Editorial Notes

PRIOR PROVISIONS

A prior section 128 was renumbered section 421 of this title.

AMENDMENTS

2016—Pub. L. 114-328, §1662(a)(2), substituted “Control and physical protection” for “Physical protection” in section catchline.

Subsec. (d). Pub. L. 114-328, §1662(a)(1), added subsec. (d).

2003—Subsec. (d). Pub. L. 108-136 struck out subsec. (d) which required the Secretary to prepare an annual report detailing the Secretary’s application during the year of each regulation or order prescribed or issued under this section.

1990—Subsec. (d). Pub. L. 101-510 substituted “on an annual basis” for “on a quarterly basis”.

§ 129. Civilian personnel management

(a) The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the

total force management policies and procedures established under section 129a of this title, (2) the workload required to carry out the functions and activities of the department, and (3) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense except in accordance with the requirements of this section and section 129a of this title.

(b) With respect to each budget activity within an appropriation for a fiscal year for operations and maintenance, the Secretary of Defense shall ensure that there are employed during that fiscal year employees in the number and with the combination of skills and qualifications that are necessary to carry out the functions within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.

(c)(1) Not later than February 1 of each year—

(A) the Secretary of Defense shall submit to the congressional defense committees a report on the management of the civilian workforce of the Office of the Secretary of Defense and the Defense Agencies and Field Activities; and

(B) the Secretary of each military department shall submit to the congressional defense committees a report on the management of the civilian workforces under the jurisdiction of such Secretary.

(2) Each report under paragraph (1) shall contain, with respect to the civilian workforce under the jurisdiction of the official submitting the report, the following:

(A) An assessment of the projected size and associated cost of such civilian workforce in the current year and for each year in the future-years defense program.

(B) If the projected size and associated cost of such civilian workforce has changed from the previous year’s projected size and associated cost, an explanation of the reasons for the increase or decrease from the previous projection, including an explanation of any efforts to reduce the overall costs of the total force of military, civilian, and contract workforces.

(C) In the case of a transfer of functions between military, civilian, and contractor workforces, an explanation of the reasons for the transfer and the steps that have been taken to control the overall cost of the function to the Department.

(Added Pub. L. 97-86, title IX, §904(a), Dec. 1, 1981, 95 Stat. 1114, §140b; renumbered §129, Pub. L. 99-433, title I, §101(a)(3), Oct. 1, 1986, 100 Stat. 994; amended Pub. L. 99-661, div. A, title V, §533, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 102-190, div. A, title III, §312(b), Dec. 5, 1991, 105 Stat. 1335; Pub. L. 104-106, div. A, title X, §1031, Feb. 10, 1996, 110 Stat. 428; Pub. L. 104-201, div. A, title X, §1074(a)(1), title XVI, §1603, Sept. 23, 1996, 110