

by regulations prescribed by the Secretary, shall designate a civilian employee of the Department of Defense in the Senior Executive Service to serve as the Senior Intelligence Oversight Official.

(b) **RESPONSIBILITIES.**—The Senior Intelligence Oversight Official shall conduct independent oversight of all intelligence, counterintelligence, and intelligence-related activities of the Department of Defense and shall have such other related responsibilities as may be determined by the Secretary.

(c) **ACCESS.**—The Senior Intelligence Oversight Official shall have—

(1) access to all information necessary to carry out the responsibilities and functions of the Senior Intelligence Oversight Official, as determined by the Secretary; and

(2) direct access to the Secretary of Defense and the Deputy Secretary of Defense, as circumstances require in the determination of the Senior Intelligence Oversight Official.

(Added Pub. L. 118–159, div. A, title IX, §921(a), Dec. 23, 2024, 138 Stat. 2036.)

Statutory Notes and Related Subsidiaries

REVIEW OF REGULATIONS

Pub. L. 118–159, div. A, title IX, §921(b), Dec. 23, 2024, 138 Stat. 2036, provided that: “The Secretary of Defense shall review and update, as appropriate, Department of Defense Directive 5148.13, and any associated or successor regulation or directive, to conform to section 430c of title 10, United States Code, as added by subsection (a).”

§ 430d. Cyber intelligence capability

(a) **REQUIREMENT.**—Not later than October 1, 2026, the Secretary of Defense, in consultation with the Director of National Intelligence, shall ensure that the Department of Defense has a dedicated cyber intelligence capability in support of the military cyber operations requirements for the warfighting missions of the United States Cyber Command, the other combatant commands, the military departments, the Defense Agencies, the Joint Staff, and the Office of the Secretary of Defense with respect to foundational, scientific and technical, and all-source intelligence on cyber technology development, capabilities, concepts of operation, operations, and plans and intentions of cyber threat actors.

(b) **NONDUPLICATION.**—In carrying out subsection (a), the Secretary may not unnecessarily duplicate intelligence activities of the Department of Defense.

(c) **RESOURCES.**—(1) The Secretary shall ensure the defense budget materials submitted for each fiscal year beginning with fiscal year 2027 include a request for funds necessary to carry out subsection (a).

(2) The Secretary shall carry out subsection (a) using funds made available for the United States Cyber Command under the Military Intelligence Program.

(3) The National Security Agency may not provide information technology services for the dedicated cyber intelligence capability under subsection (a) unless such services are provided under the Military Intelligence Program or the Information Systems Security Program.

(d) **DEFENSE BUDGET MATERIALS DEFINED.**—In this section, the term “defense budget materials”, with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(Added Pub. L. 118–159, div. A, title XVI, §1612(a), Dec. 23, 2024, 138 Stat. 2167.)

SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES

Sec.

431.	Authority to engage in commercial activities as security for intelligence collection activities.
432.	Use, disposition, and auditing of funds.
433.	Relationship with other Federal laws.
434.	Reservation of defenses and immunities.
435.	Limitations.
436.	Regulations.
437.	Congressional oversight.

Editorial Notes

AMENDMENTS

1992—Pub. L. 102–484, div. A, title X, §1052(1), Oct. 23, 1992, 106 Stat. 2499, inserted “Sec.” above item “431”.

1991—Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 437, added subchapter heading and analysis of sections.

§ 431. Authority to engage in commercial activities as security for intelligence collection activities

(a) **AUTHORITY.**—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, 2028.

(b) **INTERAGENCY COORDINATION AND SUPPORT.**—Any such activity shall—

(1)(A) be pre-coordinated with the Director of the Central Intelligence Agency using procedures mutually agreed upon by the Secretary of Defense and the Director; and

(B) where appropriate, be supported by the Director; and

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) **DEFINITIONS.**—In this subchapter:

(1) The term “commercial activities” means activities that are conducted in a manner consistent with prevailing commercial practices and includes—

(A) the acquisition, use, sale, storage and disposal of goods and services;

(B) entering into employment contracts and leases and other agreements for real and personal property;

(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

(D) acquiring licenses, registrations, permits, and insurance; and

(E) establishing corporations, partnerships, and other legal entities.

(2) The term “intelligence collection activities” means the collection of foreign intelligence and counterintelligence information.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 437; amended Pub. L. 104–93, title V, §503, Jan. 6, 1996, 109 Stat. 973; Pub. L. 105–272, title V, §501, Oct. 20, 1998, 112 Stat. 2404; Pub. L. 106–398, §1 [[div. A], title X, §1077], Oct. 30, 2000, 114 Stat. 1654, 1654A–282; Pub. L. 107–314, div. A, title X, §1053, Dec. 2, 2002, 116 Stat. 2649; Pub. L. 108–375, div. A, title IX, §921, Oct. 28, 2004, 118 Stat. 2029; Pub. L. 109–364, div. A, title IX, §931, Oct. 17, 2006, 120 Stat. 2362; Pub. L. 110–181, div. A, title IX, §931(b)(1), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, §932(a)(7), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, §1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 111–383, div. A, title IX, §921, Jan. 7, 2011, 124 Stat. 4330; Pub. L. 113–291, div. A, title XVI, §1623, Dec. 19, 2014, 128 Stat. 3632; Pub. L. 115–91, div. A, title XVI, §1622, Dec. 12, 2017, 131 Stat. 1732; Pub. L. 118–31, div. A, title XVIII, §1802, Dec. 22, 2023, 137 Stat. 685; Pub. L. 118–159, div. A, title XVI, §1611, Dec. 23, 2024, 138 Stat. 2166.)

Editorial Notes

AMENDMENTS

2024—Subsec. (a). Pub. L. 118–159, §1611(1), substituted “December 31, 2028” for “December 31, 2024”.

Subsec. (b)(1). Pub. L. 118–159, §1611(2), added par. (1) and struck out former par. (1) which read as follows: “be coordinated with, and (where appropriate) be supported by, the Director of the Central Intelligence Agency; and”.

2023—Subsec. (a). Pub. L. 118–31 substituted “December 31, 2024” for “December 31, 2023”.

2017—Subsec. (a). Pub. L. 115–91 substituted “December 31, 2023” for “December 31, 2017”.

2014—Subsec. (a). Pub. L. 113–291 substituted “December 31, 2017” for “December 31, 2015”.

2011—Subsec. (a). Pub. L. 111–383 substituted “December 31, 2015” for “December 31, 2010”.

2009—Subsec. (b)(1). Pub. L. 111–84 repealed Pub. L. 110–417, §932(a)(7). See 2008 Amendment note below.

2008—Subsec. (b)(1). Pub. L. 110–417, §932(a)(7), which directed the amendment of subsec. (b)(1) by substituting “Director of National Intelligence” for “Director of Central Intelligence”, was repealed by Pub. L. 111–84.

Pub. L. 110–181 substituted “Director of the Central Intelligence Agency” for “Director of Central Intelligence”.

2006—Subsec. (a). Pub. L. 109–364 substituted “2010” for “2006”.

2004—Subsec. (a). Pub. L. 108–375 substituted “2006” for “2004”.

2002—Subsec. (a). Pub. L. 107–314 substituted “2004” for “2002”.

2000—Subsec. (a). Pub. L. 106–398 substituted “2002” for “2000”.

1998—Subsec. (a). Pub. L. 105–272 substituted “2000” for “1998”.

1996—Subsec. (a). Pub. L. 104–93 substituted “1998” for “1995”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2009 AMENDMENT

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)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE

Pub. L. 102–88, title V, §504(b), Aug. 14, 1991, 105 Stat. 440, provided that: “The Secretary of Defense may not

authorize any activity under section 431 of title 10, United States Code, as added by subsection (a), until the later of—

“(1) the end of the 90-day period beginning on the date of the enactment of this Act [Aug. 14, 1991]; or

“(2) the effective date of regulations first prescribed under section 436 of such title, as added by subsection (a).”

§ 432. Use, disposition, and auditing of funds

(a) USE OF FUNDS.—Funds generated by a commercial activity authorized pursuant to this subchapter may be used to offset necessary and reasonable expenses arising from that activity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the activity concerned in a secure manner. Any funds generated by the activity in excess of those required for that purpose shall be deposited, as often as may be practicable, into the Treasury as miscellaneous receipts.

(b) AUDITS.—(1) The Secretary of Defense shall assign an organization within the Department of Defense to have auditing responsibility with respect to activities authorized under this subchapter.

(2) That organization shall audit the use and disposition of funds generated by any commercial activity authorized under this subchapter not less often than annually. The results of all such audits shall be reported to the congressional defense committees and the congressional intelligence committees (as defined in section 437(c) of this title) by not later than December 31 of each year.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 438; amended Pub. L. 113–66, div. A, title IX, §921(a), Dec. 26, 2013, 127 Stat. 827; Pub. L. 115–91, div. A, title XVI, §1623, Dec. 12, 2017, 131 Stat. 1732.)

Editorial Notes

AMENDMENTS

2017—Subsec. (b)(2). Pub. L. 115–91 struck out “promptly” before “reported” and inserted before period at end “by not later than December 31 of each year”.

2013—Subsec. (b)(2). Pub. L. 113–66 substituted “the congressional defense committees and the congressional intelligence committees (as defined in section 437(c) of this title).” for “the intelligence committees (as defined in section 437(d) of this title).”

§ 433. Relationship with other Federal laws

(a) IN GENERAL.—Except as provided by subsection (b), a commercial activity conducted pursuant to this subchapter shall be carried out in accordance with applicable Federal law.

(b) AUTHORIZATION OF WAIVERS WHEN NECESSARY TO MAINTAIN SECURITY.—(1) If the Secretary of Defense determines, in connection with a commercial activity authorized pursuant to section 431 of this title, that compliance with certain Federal laws or regulations pertaining to the management and administration of Federal agencies would create an unacceptable risk of compromise of an authorized intelligence activity, the Secretary may, to the extent necessary to prevent such compromise, waive compliance with such laws or regulations.

(2) Any determination and waiver by the Secretary under paragraph (1) shall be made in