

in the Department of Defense to meet such 21st century requirements.

“(b) GOAL.—It shall be a goal of the Department of Defense to fully integrate the intelligence, surveillance, and reconnaissance capabilities and coordinate the developmental activities of the military departments, intelligence agencies of the Department of Defense, and relevant combatant commands as those departments, agencies, and commands transform their intelligence, surveillance, and reconnaissance systems to meet current and future needs.”

**[§ 427. Repealed. Pub. L. 112-81, div. A, title X, § 1061(4)(A), Dec. 31, 2011, 125 Stat. 1583]**

Section, added Pub. L. 109-364, div. A, title IX, § 932(a), Oct. 17, 2006, 120 Stat. 2362, related to submission of an annual report on intelligence oversight activities of the Department of Defense.

**§ 428. Defense industrial security**

(a) RESPONSIBILITY FOR DEFENSE INDUSTRIAL SECURITY.—The Secretary of Defense shall be responsible for the protection of classified information disclosed to contractors of the Department of Defense.

(b) CONSISTENCY WITH EXECUTIVE ORDERS AND DIRECTIVES.—The Secretary shall carry out the responsibility assigned under subsection (a) in a manner consistent with Executive Order 12829 (or any successor order to such executive order) and consistent with policies relating to the National Industrial Security Program (or any successor to such program).

(c) PERFORMANCE OF INDUSTRIAL SECURITY FUNCTIONS FOR OTHER AGENCIES.—The Secretary may perform industrial security functions for other agencies of the Federal government upon request or upon designation of the Department of Defense as executive agent for the National Industrial Security Program (or any successor to such program).

(d) REGULATIONS AND POLICY GUIDANCE.—The Secretary shall prescribe, and from time to time revise, such regulations and policy guidance as are necessary to ensure the protection of classified information disclosed to contractors of the Department of Defense.

(e) DEDICATION OF RESOURCES.—The Secretary shall ensure that sufficient resources are provided to staff, train, and support such personnel as are necessary to fully protect classified information disclosed to contractors of the Department of Defense.

(f) BIENNIAL REPORT.—The Secretary shall report biennially to the congressional defense committees on expenditures and activities of the Department of Defense in carrying out the requirements of this section. The Secretary shall submit the report at or about the same time that the President's budget is submitted pursuant to section 1105(a) of title 31 in odd numbered years. The report shall be in an unclassified form (with a classified annex if necessary) and shall cover the activities of the Department of Defense in the preceding two fiscal years, including the following:

(1) The workforce responsible for carrying out the requirements of this section, including the number and experience of such workforce; training in the performance of industrial security functions; performance metrics; and resulting assessment of overall quality.

(2) A description of funds authorized, appropriated, or reprogrammed to carry out the requirements of this section, the budget execution of such funds, and the adequacy of budgets provided for performing such purpose.

(3) Statistics on the number of contractors handling classified information of the Department of Defense, and the percentage of such contractors who are subject to foreign ownership, control, or influence.

(4) Statistics on the number of violations identified, enforcement actions taken, and the percentage of such violations occurring at facilities of contractors subject to foreign ownership, control, or influence.

(5) An assessment of whether major contractors implementing the program have adequate enforcement programs and have trained their employees adequately in the requirements of the program.

(6) Trend data on attempts to compromise classified information disclosed to contractors of the Department of Defense to the extent that such data are available.

(Added Pub. L. 110-417, [div. A], title VIII, § 845(a)(1), Oct. 14, 2008, 122 Stat. 4541, § 438; renumbered § 428, Pub. L. 111-84, div. A, title X, § 1073(a)(4), Oct. 28, 2009, 123 Stat. 2472; Pub. L. 111-383, div. A, title X, § 1075(b)(11), Jan. 7, 2011, 124 Stat. 4369.)

REFERENCES IN TEXT

Executive Order 12829, referred to in subsec. (b), is set out as a note under section 435 of Title 50, War and National Defense.

AMENDMENTS

2011—Subsec. (f). Pub. L. 111-383 struck out “, United States Code,” after “title 31”.

2009—Pub. L. 111-84 renumbered section 438 of this title as this section.

REQUIREMENT FOR ENTITIES WITH FACILITY CLEARANCES THAT ARE NOT UNDER FOREIGN OWNERSHIP CONTROL OR INFLUENCE MITIGATION

Pub. L. 111-383, div. A, title VIII, § 845, Jan. 7, 2011, 124 Stat. 4285, provided that:

“(a) REQUIREMENT.—The Secretary of Defense shall develop a plan to ensure that covered entities employ and maintain policies and procedures that meet requirements under the national industrial security program. In developing the plan, the Secretary shall consider whether or not covered entities, or any category of covered entities, should be required to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.

“(b) COVERED ENTITY.—A covered entity under this section is an entity—

“(1) to which the Department of Defense has granted a facility clearance; and

“(2) that is not subject to foreign ownership control or influence mitigation measures.

“(c) GUIDANCE.—The Secretary of Defense shall issue guidance, including appropriate compliance mechanisms, to implement the requirement in subsection (a). To the extent determined appropriate by the Secretary, the guidance shall require covered entities, or any category of covered entities, to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.

“(d) REPORT.—Not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary shall submit to the Committees on Armed Serv-

ices of the Senate and the House of Representatives a report on the plan developed pursuant to subsection (a) and the guidance issued pursuant to subsection (c). The report shall specifically address the rationale for the Secretary's decision on whether or not to require covered entities, or any category of covered entities, to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures."

#### SUBMISSION OF FIRST BIENNIAL REPORT

Pub. L. 110-417, [div. A], title VIII, §845(b), Oct. 14, 2008, 122 Stat. 4542, provided that: "Notwithstanding the deadline in subsection (f) of section 438 [now 428] of title 10, United States Code, as added by this section, the first biennial report submitted after the date of the enactment of this Act [Oct. 14, 2008] pursuant to such subsection shall be submitted not later than September 1, 2009, and shall address the period from the date of the enactment of this Act to the issuance of such report."

### § 429. Appropriations for Defense intelligence elements; accounts for transfers; transfer authority

(a) ACCOUNTS FOR APPROPRIATIONS FOR DEFENSE INTELLIGENCE ELEMENTS.—The Secretary of Defense may transfer appropriations of the Department of Defense which are available for the activities of Defense intelligence elements to an account or accounts established for receipt of such transfers. Each such account may also receive transfers from the Director of National Intelligence if made pursuant to Section<sup>1</sup> 102A of the National Security Act of 1947 (50 U.S.C. 403-1), and transfers and reimbursements arising from transactions, as authorized by law, between a Defense intelligence element and another entity. Appropriation balances in each such account may be transferred back to the account or accounts from which such appropriations originated as appropriation refunds.

(b) RECORDATION OF TRANSFERS.—Transfers made pursuant to subsection (a) shall be recorded as expenditure transfers.

(c) AVAILABILITY OF FUNDS.—Funds transferred pursuant to subsection (a) shall remain available for the same time period and for the same purpose as the appropriation from which transferred, and shall remain subject to the same limitations provided in the act making the appropriation.

(d) OBLIGATION AND EXPENDITURE OF FUNDS.—Unless otherwise specifically authorized by law, funds transferred pursuant to subsection (a) shall only be obligated and expended in accordance with chapter 15 of title 31 and all other applicable provisions of law.

(e) DEFENSE INTELLIGENCE ELEMENT DEFINED.—In this section, the term "Defense intelligence element" means any of the Department of Defense agencies, offices, and elements included within the definition of "intelligence community" under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(Added Pub. L. 112-87, title IV, §433(a), Jan. 3, 2012, 125 Stat. 1894.)

<sup>1</sup> So in original. Probably should not be capitalized.

## 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.

#### 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, 2015.

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

(1) be coordinated with, and (where appropriate) be supported by, the Director of the Central Intelligence Agency; 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,