

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 Section¹ 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.)

¹ 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.
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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,

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.)

AMENDMENTS

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”.

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

Section 504(b) of Pub. L. 102-88 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 promptly reported to the intelligence committees (as defined in section 437(d)¹ of this title).

¹ See References in Text note below.

(Added Pub. L. 102-88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 438.)

REFERENCES IN TEXT

Section 437(d) of this title, referred to in subsec. (b)(2), was struck out by Pub. L. 107-306, title VIII, §811(b)(4)(A)(ii), Nov. 27, 2002, 116 Stat. 2423.

§ 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 writing and shall include a specification of the laws and regulations for which compliance by the commercial activity concerned is not required consistent with this section.

(3) The authority of the Secretary under paragraph (1) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, an Assistant Secretary of Defense, or a Secretary of a military department.

(c) **FEDERAL LAWS AND REGULATIONS.**—For purposes of this section, Federal laws and regulations pertaining to the management and administration of Federal agencies are only those Federal laws and regulations pertaining to the following:

- (1) The receipt and use of appropriated and nonappropriated funds.
- (2) The acquisition or management of property or services.
- (3) Information disclosure, retention, and management.
- (4) The employment of personnel.
- (5) Payments for travel and housing.
- (6) The establishment of legal entities or government instrumentalities.
- (7) Foreign trade or financial transaction restrictions that would reveal the commercial activity as an activity of the United States Government.

(Added Pub. L. 102-88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 438.)

§ 434. Reservation of defenses and immunities

The submission to judicial proceedings in a State or other legal jurisdiction, in connection with a commercial activity undertaken pursuant to this subchapter, shall not constitute a waiver of the defenses and immunities of the United States.

(Added Pub. L. 102-88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

§ 435. Limitations

(a) **LAWFUL ACTIVITIES.**—Nothing in this subchapter authorizes the conduct of any intel-