

(2) ensuring the timely execution of programs, policies, and directives established or developed by the Director.

**(d) Meetings**

The Director of National Intelligence shall convene regular meetings of the Joint Intelligence Community Council.

**(e) Advice and opinions of members other than Chairman**

(1) A member of the Joint Intelligence Community Council (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the Director of National Intelligence to the President or the National Security Council, in the role of the Chairman as Chairman of the Joint Intelligence Community Council. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time the Chairman presents the advice of the Chairman to the President or the National Security Council, as the case may be.

(2) The Chairman shall establish procedures to ensure that the presentation of the advice of the Chairman to the President or the National Security Council is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Council.

**(f) Recommendations to Congress**

Any member of the Joint Intelligence Community Council may make such recommendations to Congress relating to the intelligence community as such member considers appropriate.

(July 26, 1947, ch. 343, title I, §101A, as added Pub. L. 108-458, title I, §1031, Dec. 17, 2004, 118 Stat. 3677.)

**EFFECTIVE DATE**

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

**§ 402a. Coordination of counterintelligence activities**

**(a) Establishment of Counterintelligence Policy Board**

There is established within the executive branch of Government a National Counterintelligence Policy Board (in this section referred to as the "Board"). The Board shall report to the President through the National Security Council.

**(b) Chairperson**

The National Counterintelligence Executive under section 902 of the Counterintelligence Enhancement Act of 2002 [50 U.S.C. 402b] shall serve as the chairperson of the Board.

**(c) Membership**

The membership of the National Counterintelligence Policy Board shall consist of the following:

(1) The National Counterintelligence Executive.

(2) Senior personnel of departments and elements of the United States Government, appointed by the head of the department or element concerned, as follows:

(A) The Department of Justice, including the Federal Bureau of Investigation.

(B) The Department of Defense, including the Joint Chiefs of Staff.

(C) The Department of State.

(D) The Department of Energy.

(E) The Central Intelligence Agency.

(F) Any other department, agency, or element of the United States Government specified by the President.

**(d) Functions and discharge of functions**

(1) The Board shall—

(A) serve as the principal mechanism for—

(i) developing policies and procedures for the approval of the President to govern the conduct of counterintelligence activities; and

(ii) upon the direction of the President, resolving conflicts that arise between elements of the Government conducting such activities; and

(B) act as an interagency working group to—

(i) ensure the discussion and review of matters relating to the implementation of the Counterintelligence Enhancement Act of 2002; and

(ii) provide advice to the National Counterintelligence Executive on priorities in the implementation of the National Counterintelligence Strategy produced by the Office of the National Counterintelligence Executive under section 904(e)(2) of that Act.<sup>1</sup>

(2) The Board may, for purposes of carrying out its functions under this section, establish such interagency boards and working groups as the Board considers appropriate.

**(e) Coordination of counterintelligence matters with Federal Bureau of Investigation**

(1) Except as provided in paragraph (5), the head of each department or agency within the executive branch shall ensure that—

(A) the Federal Bureau of Investigation is advised immediately of any information, regardless of its origin, which indicates that classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power;

(B) following a report made pursuant to subparagraph (A), the Federal Bureau of Investigation is consulted with respect to all subsequent actions which may be undertaken by the department or agency concerned to determine the source of such loss or compromise; and

(C) where, after appropriate consultation with the department or agency concerned, the Federal Bureau of Investigation undertakes investigative activities to determine the source of the loss or compromise, the Federal Bureau of Investigation is given complete and timely access to the employees and records of

<sup>1</sup> See References in Text note below.

the department or agency concerned for purposes of such investigative activities.

(2) Except as provided in paragraph (5), the Director of the Federal Bureau of Investigation shall ensure that espionage information obtained by the Federal Bureau of Investigation pertaining to the personnel, operations, or information of departments or agencies of the executive branch, is provided through appropriate channels in a timely manner to the department or agency concerned, and that such departments or agencies are consulted in a timely manner with respect to espionage investigations undertaken by the Federal Bureau of Investigation which involve the personnel, operations, or information of such department or agency.

(3)(A) The Director of the Federal Bureau of Investigation shall submit to the head of the department or agency concerned a written assessment of the potential impact of the actions of the department or agency on a counterintelligence investigation.

(B) The head of the department or agency concerned shall—

(i) use an assessment under subparagraph (A) as an aid in determining whether, and under what circumstances, the subject of an investigation under paragraph (1) should be left in place for investigative purposes; and

(ii) notify in writing the Director of the Federal Bureau of Investigation of such determination.

(C) The Director of the Federal Bureau of Investigation and the head of the department or agency concerned shall continue to consult, as appropriate, to review the status of an investigation covered by this paragraph, and to reassess, as appropriate, a determination of the head of the department or agency concerned to leave a subject in place for investigative purposes.

(4)(A) The Federal Bureau of Investigation shall notify appropriate officials within the executive branch, including the head of the department or agency concerned, of the commencement of a full field espionage investigation with respect to an employee within the executive branch.

(B) A department or agency may not conduct a polygraph examination, interrogate, or otherwise take any action that is likely to alert an employee covered by a notice under subparagraph (A) of an investigation described in that subparagraph without prior coordination and consultation with the Federal Bureau of Investigation.

(5) Where essential to meet extraordinary circumstances affecting vital national security interests of the United States, the President may on a case-by-case basis waive the requirements of paragraph (1), (2), or (3), as they apply to the head of a particular department or agency, or the Director of the Federal Bureau of Investigation. Such waiver shall be in writing and shall fully state the justification for such waiver. Within thirty days, the President shall notify the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives that such waiver has been issued, and at that time or as soon as national security consider-

ations permit, provide these committees with a complete explanation of the circumstances which necessitated such waiver.

(6) Nothing in this section may be construed to alter the existing jurisdictional arrangements between the Federal Bureau of Investigation and the Department of Defense with respect to investigations of persons subject to the Uniform Code of Military Justice, nor to impose additional reporting requirements upon the Department of Defense with respect to such investigations beyond those required by existing law and executive branch policy.

(7) As used in this section, the terms “foreign power” and “agent of a foreign power” have the same meanings as set forth in sections<sup>1</sup> 1801(a) and (b), respectively, of this title.

(Pub. L. 103-359, title VIII, §811, Oct. 14, 1994, 108 Stat. 3455; Pub. L. 106-120, title VI, §602, Dec. 3, 1999, 113 Stat. 1620; Pub. L. 106-567, title VI, §605, Dec. 27, 2000, 114 Stat. 2853; Pub. L. 107-306, title VIII, §811(b)(5)(B), title IX, §903, Nov. 27, 2002, 116 Stat. 2424, 2433; Pub. L. 108-177, title III, §361(g), Dec. 13, 2003, 117 Stat. 2625; Pub. L. 108-458, title I, §1071(g)(1), Dec. 17, 2004, 118 Stat. 3691.)

#### REFERENCES IN TEXT

The Counterintelligence Enhancement Act of 2002, referred to in subsec. (d)(1)(B), is title IX of Pub. L. 107-306, Nov. 27, 2002, 116 Stat. 2432, which enacted sections 402b and 402c of this title, amended this section, and enacted provisions set out as a note under section 402b of this title. Section 904(e)(2) of the Act was redesignated 904(d)(2) by Pub. L. 111-259, title IV, §412(a)(2), Oct. 7, 2010, 124 Stat. 2725, and is classified to section 402c(d)(2) of this title. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 401 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Counterintelligence and Security Enhancements Act of 1994 and also as part of the Intelligence Authorization Act for Fiscal Year 1995, and not as part of the National Security Act of 1947 which comprises this chapter.

#### AMENDMENTS

2004—Subsec. (c)(6)(C). Pub. L. 108-458, which directed amendment of subsec. (c)(6)(C) by substituting “Director of National Intelligence” for “Director of Central Intelligence”, could not be executed because of the amendments by Pub. L. 107-306, §903(a)(2), and Pub. L. 108-177. See 2002 and 2003 Amendment notes below.

2003—Subsec. (e). Pub. L. 108-177, which directed the amendment of subsec. (c) by redesignating pars. (7) and (8) as (6) and (7), respectively, and striking out former par. (6), was executed by making the amendment to subsec. (e) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (e) by Pub. L. 107-306, §903(a)(2), see below. Prior to amendment, par. (6) read as follows:

“(6)(A) Not later each year than the date provided in section 415b of this title, the Director of the Federal Bureau of Investigation shall submit to the congressional intelligence committees (as defined in section 401a of this title) a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

“(B) Not later than February 1 each year, the Director shall, in accordance with applicable security procedures, submit to the Committees on the Judiciary of the Senate and House of Representatives a report with

<sup>1</sup> So in original. Probably should be “section”.

respect to compliance with paragraphs (1) and (2) during the previous calendar year.

“(C) The Director of the Federal Bureau of Investigation shall submit each report under this paragraph in consultation with the Director of Central Intelligence and the Secretary of Defense.”

2002—Subsec. (b). Pub. L. 107-306, §903(a)(1), (3), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “The Board shall serve as the principal mechanism for—

“(1) developing policies and procedures for the approval of the President to govern the conduct of counterintelligence activities; and

“(2) resolving conflicts, as directed by the President, which may arise between elements of the Government which carry out such activities.”

Subsec. (c). Pub. L. 107-306, §903(b), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (c)(6). Pub. L. 107-306, §811(b)(5)(B), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “The Director of the Federal Bureau of Investigation shall, in consultation with the Director of Central Intelligence and the Secretary of Defense, report annually, beginning on February 1, 1995, and continuing each year thereafter, to the Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives and, in accordance with applicable security procedures, the Committees on the Judiciary of the House of Representatives and the Senate with respect to compliance with paragraphs (1) and (2) during the previous calendar year.”

Subsec. (d). Pub. L. 107-306, §903(c), added subsec. (d).

Subsec. (e). Pub. L. 107-306, §903(a)(2), redesignated subsec. (c) as (e).

2000—Subsec. (c)(1). Pub. L. 106-567, §605(a)(1), substituted “paragraph (5)” for “paragraph (3)”.

Subsec. (c)(2). Pub. L. 106-567, §605(a)(1), (b), substituted “paragraph (5)” for “paragraph (3)” and inserted “in a timely manner” after “through appropriate channels” and “are consulted”.

Subsec. (c)(3). Pub. L. 106-567, §605(a)(3), added par. (3). Former par. (3) redesignated (5).

Subsec. (c)(4). Pub. L. 106-567, §605(a), (c), added par. (4). Former par. (4) redesignated (6).

Subsec. (c)(5). Pub. L. 106-567, §605(a)(2), (4), redesignated par. (3) as (5) and substituted “paragraph (1), (2), or (3)” for “paragraph (1) or (2)”. Former par. (5) redesignated (7).

Subsec. (c)(6) to (8). Pub. L. 106-567, §605(a)(2), redesignated pars. (4) to (6) as (6) to (8), respectively.

1999—Subsec. (c)(2). Pub. L. 106-120 struck out “after a report has been provided pursuant to paragraph (1)(A)” before period at end.

#### EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-177 effective Dec. 31, 2003, see section 361(n) of Pub. L. 108-177, set out as a note under section 1611 of Title 10, Armed Forces.

#### ANNUAL REPORTS ON INTELLIGENCE ACTIVITIES OF THE PEOPLE’S REPUBLIC OF CHINA

Pub. L. 105-107, title III, §308, Nov. 20, 1997, 111 Stat. 2253, as amended by Pub. L. 107-306, title VIII, §811(b)(5)(D), Nov. 27, 2002, 116 Stat. 2424, related to annual reports to Congress by the Director of Central In-

telligence and the Director of the Federal Bureau of Investigation on intelligence activities of the People’s Republic of China directed against or affecting the interests of the United States, prior to repeal by Pub. L. 108-177, title III, §361(f), Dec. 13, 2003, 117 Stat. 2625.

## § 402b. National Counterintelligence Executive

### (a) Establishment

(1) There shall be a National Counterintelligence Executive, who shall be appointed by the Director of National Intelligence.

(2) It is the sense of Congress that the Director of National Intelligence should seek the views of the Attorney General, Secretary of Defense, and Director of the Central Intelligence Agency in selecting an individual for appointment as the Executive.

### (b) Mission

The mission of the National Counterintelligence Executive shall be to serve as the head of national counterintelligence for the United States Government.

### (c) Duties

Subject to the direction and control of the Director of National Intelligence, the duties of the National Counterintelligence Executive are as follows:

(1) To carry out the mission referred to in subsection (b) of this section.

(2) To act as chairperson of the National Counterintelligence Policy Board under section 402a of this title.

(3) To act as head of the Office of the National Counterintelligence Executive under section 402c of this title.

(4) To participate as an observer on such boards, committees, and entities of the executive branch as the Director of National Intelligence considers appropriate for the discharge of the mission and functions of the Executive and the Office of the National Counterintelligence Executive under section 402c of this title.

(Pub. L. 107-306, title IX, §902, Nov. 27, 2002, 116 Stat. 2432; Pub. L. 108-458, title I, §1072(d)(1)(B), Dec. 17, 2004, 118 Stat. 3693.)

#### CODIFICATION

Section was enacted as part of the Counterintelligence Enhancement Act of 2002, and also as part of the Intelligence Authorization Act for Fiscal Year 2003, and not as part of the National Security Act of 1947 which comprises this chapter.

#### AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-458, §1072(d)(1)(B)(i), substituted “Director of National Intelligence” for “President”.

Subsec. (a)(2). Pub. L. 108-458, §1072(d)(1)(B), substituted “Director of National Intelligence” for “President” and “Director of the Central Intelligence Agency” for “Director of Central Intelligence”.

Subsec. (c). Pub. L. 108-458, §1072(d)(1)(B)(i), substituted “Director of National Intelligence” for “President” in two places.

#### EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.