

Sept. 23, 1996, 110 Stat. 2838; renumbered Pub. L. 107-314, div. D, title XLVIII, §4852, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(16), Nov. 24, 2003, 117 Stat. 1786.)

CHAPTER 43—PREVENTING WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM

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§ 2901. Findings

The 9/11 Commission has made the following recommendations:

(1) Strengthen “counter-proliferation” efforts

The United States should work with the international community to develop laws and an international legal regime with universal jurisdiction to enable any state in the world to capture, interdict, and prosecute smugglers of nuclear material.

(2) Expand the Proliferation Security Initiative

In carrying out the Proliferation Security Initiative, the United States should—

- (A) use intelligence and planning resources of the North Atlantic Treaty Organization (NATO) alliance;
(B) make participation open to non-NATO countries; and
(C) encourage Russia and the People’s Republic of China to participate.

(3) Support the Cooperative Threat Reduction program

The United States should expand, improve, increase resources for, and otherwise fully support the Cooperative Threat Reduction program.

(Pub. L. 110-53, title XVIII, §1801, Aug. 3, 2007, 121 Stat. 491.)

§ 2902. Definitions

In this chapter:

(1) The terms “prevention of weapons of mass destruction proliferation and terrorism” and “prevention of WMD proliferation and terrorism” include activities under—

(A) the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2731; 50 U.S.C. 2362 note);

(B) the programs for which appropriations are authorized by section 3101(a)(2) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 116 Stat. 2729);

(C) programs authorized by section 5854 of title 22 and programs authorized by section 5902 of title 22; and

(D) a program of any agency of the Federal Government having a purpose similar to that of any of the programs identified in subparagraphs (A) through (C), as designated by the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism and the head of the agency.

(2) The terms “weapons of mass destruction” and “WMD” mean chemical, biological, and nuclear weapons, and chemical, biological, and nuclear materials used in the manufacture of such weapons.

(3) The term “items of proliferation concern” means—

(A) equipment, materials, or technology listed in—

(i) the Trigger List of the Guidelines for Nuclear Transfers of the Nuclear Suppliers Group;

(ii) the Annex of the Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software, and Related Technology of the Nuclear Suppliers Group; or

(iii) any of the Common Control Lists of the Australia Group; and

(B) any other sensitive items.

(Pub. L. 110-53, title XVIII, §1802, Aug. 3, 2007, 121 Stat. 491.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title XVIII of Pub. L. 110-53, which enacted this chapter, amended section 402 of this title and sections 5952 and 5963 of Title 22, Foreign Relations and Intercourse, and amended provisions set out as notes under sections 2551 and 5952 of Title 22. For complete classification of title XVIII to the Code, see Tables.

Section 3101(a)(2) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314), referred to in par. (1)(B), is not classified to the Code.

SUBCHAPTER I—PROLIFERATION SECURITY INITIATIVE

§ 2911. Proliferation Security Initiative improvements and authorities

(a) Sense of Congress

It is the sense of Congress, consistent with the 9/11 Commission’s recommendations, that the

President should strive to expand and strengthen the Proliferation Security Initiative (in this subchapter referred to as “PSI”) announced by the President on May 31, 2003, with a particular emphasis on the following:

(1) Issuing a presidential directive to the relevant United States Government agencies and departments that directs such agencies and departments to—

(A) establish clear PSI authorities, responsibilities, and structures;

(B) include in the budget request for each such agency or department for each fiscal year, a request for funds necessary for United States PSI-related activities; and

(C) provide other necessary resources to achieve more efficient and effective performance of United States PSI-related activities.

(2) Increasing PSI cooperation with all countries.

(3) Implementing the recommendations of the Government Accountability Office (GAO) in the September 2006 report titled “Better Controls Needed to Plan and Manage Proliferation Security Initiative Activities” (GAO-06-937C) regarding the following:

(A) The Department of Defense and the Department of State should establish clear PSI roles and responsibilities, policies and procedures, interagency communication mechanisms, documentation requirements, and indicators to measure program results.

(B) The Department of Defense and the Department of State should develop a strategy to work with PSI-participating countries to resolve issues that are impediments to conducting successful PSI interdictions.

(4) Establishing a multilateral mechanism to increase coordination, cooperation, and compliance among PSI-participating countries.

(b) Budget submission

(1) In general

Each fiscal year in which activities are planned to be carried out under the PSI, the President shall include in the budget request for each participating United States Government agency or department for that fiscal year, a description of the funding and the activities for which the funding is requested for each such agency or department.

(2) Report

Not later than the first Monday in February of each even-numbered year in which the President submits a budget request described in paragraph (1), the Secretary of Defense and the Secretary of State shall submit to Congress a comprehensive joint report setting forth the following:

(A) A 3-year plan, beginning with the fiscal year for the budget request, that specifies the amount of funding and other resources to be provided by the United States for PSI-related activities over the term of the plan, including the purposes for which such funding and resources will be used.

(B) For the report submitted in 2008, a description of the PSI-related activities carried out during the 3 fiscal years preceding

the year of the report, and for the report submitted in 2009 and each year thereafter, a description of the PSI-related activities carried out during the fiscal year preceding the year of the report. The description shall include, for each fiscal year covered by the report—

(i) the amounts obligated and expended for such activities and the purposes for which such amounts were obligated and expended;

(ii) a description of the participation of each department or agency of the United States Government in such activities;

(iii) a description of the participation of each foreign country or entity in such activities;

(iv) a description of any assistance provided to a foreign country or entity participating in such activities in order to secure such participation, in response to such participation, or in order to improve the quality of such participation; and

(v) such other information as the Secretary of Defense and the Secretary of State determine should be included to keep Congress fully informed of the operation and activities of the PSI.

(3) Classification

The report required by paragraph (2) shall be in an unclassified form but may include a classified annex as necessary.

(c) Implementation report

Not later than 180 days after August 3, 2007, the President shall transmit to the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Foreign Relations of the Senate a report on the implementation of this section. The report shall include—

(1) the steps taken to implement the recommendations described in paragraph (3) of subsection (a); and

(2) the progress made toward implementing the matters described in paragraphs (1), (2), and (4) of subsection (a).

(d) GAO reports

The Government Accountability Office shall submit to Congress, for each of fiscal years 2007, 2009, and 2011, a report with its assessment of the progress and effectiveness of the PSI, which shall include an assessment of the measures referred to in subsection (a).

(Pub. L. 110-53, title XVIII, §1821, Aug. 3, 2007, 121 Stat. 493; Pub. L. 112-81, div. A, title X, §1067(b), Dec. 31, 2011, 125 Stat. 1589.)

AMENDMENTS

2011—Subsec. (b)(2). Pub. L. 112-81 substituted “of each even-numbered year” for “of each year” in introductory provisions.

ASSIGNMENT OF FUNCTIONS UNDER SECTION 1821(c) OF THE IMPLEMENTING RECOMMENDATIONS OF THE 9/11 COMMISSION ACT OF 2007

Memorandum of President of the United States, Mar. 28, 2008, 73 F.R. 19957, provided:

Memorandum for the Secretary of State

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 1821(c) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53).

In the performance of your responsibility under this memorandum, you shall, as appropriate, consult the heads of other departments and agencies.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 2912. Authority to provide assistance to cooperative countries

(a) In general

The President is authorized to provide assistance under subsection (b) to any country that cooperates with the United States and with other countries allied with the United States to prevent the transport and transshipment of items of proliferation concern in its national territory or airspace or in vessels under its control or registry.

(b) Types of assistance

The assistance authorized under subsection (a) consists of the following:

- (1) Assistance under section 2763 of title 22.
- (2) Assistance under chapters 4 (22 U.S.C. 2346 et seq.) and 5 (22 U.S.C. 2347 et seq.) of part II of the Foreign Assistance Act of 1961.
- (3) Drawdown of defense¹ excess defense articles and services under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j).

(c) Congressional notification

Assistance authorized under this section may not be provided until at least 30 days after the date on which the President has provided notice thereof to the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives and the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate, in accordance with the procedures applicable to reprogramming notifications under section 634A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1(a)), and has certified to such committees that such assistance will be used in accordance with the requirement of subsection (e) of this section.

(d) Limitation

Assistance may be provided to a country under subsection (a) in no more than 3 fiscal years.

(e) Use of assistance

Assistance provided under this section shall be used to enhance the capability of the recipient country to prevent the transport and transshipment of items of proliferation concern in its national territory or airspace, or in vessels under its control or registry, including through the development of a legal framework in that country to enhance such capability by criminalizing proliferation, enacting strict export controls, and securing sensitive materials within its

¹ So in original. The word "defense" probably should not appear before "excess".

borders, and to enhance the ability of the recipient country to cooperate in PSI operations.

(f) Limitation on ship or aircraft transfers

(1) Limitation

Except as provided in paragraph (2), the President may not transfer any excess defense article that is a vessel or an aircraft to a country that has not agreed, in connection with such transfer, that it will support and assist efforts by the United States, consistent with international law, to interdict items of proliferation concern until 30 days after the date on which the President has provided notice of the proposed transfer to the committees described in subsection (c) in accordance with the procedures applicable to reprogramming notifications under section 634A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1(a)), in addition to any other requirement of law.

(2) Exception

The limitation in paragraph (1) shall not apply to any transfer, not involving significant military equipment, in which the primary use of the aircraft or vessel will be for counternarcotics, counterterrorism, or counter-proliferation purposes.

(Pub. L. 110-53, title XVIII, §1822, Aug. 3, 2007, 121 Stat. 495.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (b)(2), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424. Chapters 4 and 5 of part II of the Act are classified generally to parts IV (§2346 et seq.) and V (§2347 et seq.), respectively, of subchapter II of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

SUBCHAPTER II—ASSISTANCE TO ACCELERATE PROGRAMS TO PREVENT WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM

§ 2921. Statement of policy

It shall be the policy of the United States, consistent with the 9/11 Commission's recommendations, to eliminate any obstacles to timely obligating and executing the full amount of any appropriated funds for threat reduction and nonproliferation programs in order to accelerate and strengthen progress on preventing weapons of mass destruction (WMD) proliferation and terrorism. Such policy shall be implemented with concrete measures, such as those described in this chapter, including the removal and modification of statutory limits to executing funds, the expansion and strengthening of the Proliferation Security Initiative, the establishment of the Office of the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism under subchapter III, and the establishment of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism under subtitle E.¹ As a result, Congress intends that any funds authorized to be appropriated to pro-

¹ See References in Text below.