

(d) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EFFECTIVE DATES OF PROVISIONS IN TITLE I OF THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, provided:

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Energy[,] the Secretary of Homeland Security[,] the Director of the Office of Management and Budget[,] and] the Director of National Intelligence

Subsection 1097(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458, December 17, 2004) (the Act) [set out in a note above] provides:

(a) IN GENERAL- Except as otherwise expressly provided in this Act, this title and the amendments made by this title shall take effect not later than 6 months after the date of the enactment of this Act.

Subsection 1097(a) clearly contemplates that one or more of the provisions in Title I of the Act may take effect earlier than the date that is 6 months after the date of enactment of the Act, but does not state explicitly the mechanism for determining when such earlier effect shall occur, leaving it to the President in the execution of the Act. Moreover, given that section 1097(a) evinces a legislative intent to afford the President flexibility, and such flexibility is constitutionally appropriate with respect to intelligence matters (see *United States v. Curtiss-Wright Export Corporation*, 299 U.S. 304 (1936)), the executive branch shall construe section 1097(a) to authorize the President to select different effective dates that precede the 6-month deadline for different provisions in Title I.

Therefore, pursuant to the Constitution and the laws of the United States of America, including subsection 1097(a) of the Act, I hereby determine and direct:

1. Sections 1097(a) and 1103 of the Act [set out in notes above], relating respectively to effective dates of provisions and to severability, shall take effect immediately upon the signing of this memorandum to any extent that they have not already taken effect.

2. Provisions in Title I of the Act other than those addressed in numbered paragraph 1 of this memorandum shall take effect immediately upon the signing of this memorandum, except:

(a) any provision in Title I of the Act for which the Act expressly provides the date on which the provision shall take effect; and

(b) sections 1021 and 1092 of the Act [enacting section 404o of this title and provisions set out in a note above, respectively], relating to the National Counterterrorism Center.

The taking of effect of a provision pursuant to section 1097(a) of the Act and this memorandum shall not affect the construction of such provision by the executive branch as set forth in my Statement of December 17, 2004, upon signing the Act into law.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 401a. Definitions

As used in this Act:

(1) The term “intelligence” includes foreign intelligence and counterintelligence.

(2) The term “foreign intelligence” means information relating to the capabilities, inten-

tions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(3) The term “counterintelligence” means information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(4) The term “intelligence community” includes the following:

(A) The Office of the Director of National Intelligence.

(B) The Central Intelligence Agency.

(C) The National Security Agency.

(D) The Defense Intelligence Agency.

(E) The National Geospatial-Intelligence Agency.

(F) The National Reconnaissance Office.

(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy.

(I) The Bureau of Intelligence and Research of the Department of State.

(J) The Office of Intelligence and Analysis of the Department of the Treasury.

(K) The Office of Intelligence and Analysis of the Department of Homeland Security.

(L) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

(5) The terms “national intelligence” and “intelligence related to national security” refer to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that—

(A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and

(B) that involves—

(i) threats to the United States, its people, property, or interests;

(ii) the development, proliferation, or use of weapons of mass destruction; or

(iii) any other matter bearing on United States national or homeland security.

(6) The term “National Intelligence Program” refers to all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of National Intelligence and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the

planning and conduct of tactical military operations by United States Armed Forces.

(7) The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(July 26, 1947, ch. 343, §3, as added Pub. L. 102-496, title VII, §702, Oct. 24, 1992, 106 Stat. 3188; amended Pub. L. 103-359, title V, §501(a)(1), Oct. 14, 1994, 108 Stat. 3428; Pub. L. 104-201, div. A, title XI, §1122(b)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 107-56, title IX, §902, Oct. 26, 2001, 115 Stat. 387; Pub. L. 107-108, title I, §105, Dec. 28, 2001, 115 Stat. 1397; Pub. L. 107-296, title II, §201(h), Nov. 25, 2002, 116 Stat. 2149; Pub. L. 107-306, title III, §353(a), Nov. 27, 2002, 116 Stat. 2401; Pub. L. 108-136, div. A, title IX, §921(e)(1), Nov. 24, 2003, 117 Stat. 1569; Pub. L. 108-177, title I, §105(d)(1), Dec. 13, 2003, 117 Stat. 2603; Pub. L. 108-458, title I, §§1012, 1073, 1074(a), Dec. 17, 2004, 118 Stat. 3662, 3693, 3694; Pub. L. 111-259, title IV, §441, title VIII, §804(1), Oct. 7, 2010, 124 Stat. 2732, 2747; Pub. L. 112-87, title IV, §431, title V, §505(1), Jan. 3, 2012, 125 Stat. 1894, 1897.)

REFERENCES IN TEXT

This Act, referred to in text, means act July 26, 1947, ch. 343, 61 Stat. 495, as amended, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

AMENDMENTS

2012—Par. (4)(K). Pub. L. 112-87, §431, amended subpar. (K) generally. Prior to amendment, subpar. (K) read as follows: “The elements of the Department of Homeland Security concerned with the analysis of intelligence information.”

Par. (6). Pub. L. 112-87, §505(1), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2010—Par. (4)(H). Pub. L. 111-259, §441(1), inserted “the Coast Guard,” after “the Marine Corps,” and “the Drug Enforcement Administration,” after “the Federal Bureau of Investigation.”

Par. (4)(K). Pub. L. 111-259, §441(2), struck out “, including the Office of Intelligence of the Coast Guard” after “information”.

Par. (4)(L). Pub. L. 111-259, §804(1), struck out “other” after “elements of any”.

2004—Par. (4). Pub. L. 108-458, §1073, amended par. (4) generally, substituting provisions defining “intelligence community” as including the Office of the Director of National Intelligence and other entities for provisions defining “intelligence community” as including the Office of the Director of Central Intelligence and other entities.

Par. (5). Pub. L. 108-458, §1012, amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The terms ‘national intelligence’ and ‘intelligence related to the national security’—

“(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

“(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the Director of Central Intelligence and the Attorney General, or otherwise as expressly provided for in this title.”

Par. (6). Pub. L. 108-458, §1074(a), struck out “Foreign” before “Intelligence Program”.

2003—Par. (4)(E). Pub. L. 108-136 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

Par. (4)(H). Pub. L. 108-177, §105(d)(1)(A), struck out “the Department of the Treasury,” after “the Federal Bureau of Investigation.”

Par. (4)(J) to (L). Pub. L. 108-177, §105(d)(1)(B), (C), added subpar. (J) and redesignated former subpars. (J) and (K) as (K) and (L), respectively.

2002—Par. (4)(J), (K). Pub. L. 107-296 added subpar. (J) and redesignated former subpar. (J) as (K).

Par. (7). Pub. L. 107-306 added par. (7).

2001—Par. (2). Pub. L. 107-56, §902(1), inserted “, or international terrorist activities” before period at end.

Par. (3). Pub. L. 107-56, §902(2), substituted “, and activities conducted,” for “and activities conducted”.

Par. (4)(H). Pub. L. 107-108 struck out “and” before “the Department of Energy” and inserted “, and the Coast Guard” before semicolon.

1996—Par. (4)(E). Pub. L. 104-201 substituted “National Imagery and Mapping Agency” for “Central Imagery Office”.

1994—Par. (4)(E). Pub. L. 103-359 substituted “the Central Imagery Office” for “the central imagery authority within the Department of Defense”.

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 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

DELEGATION OF FUNCTIONS

For assignment of function of President under par. (5)(A) of this section to Director of National Intelligence, see Ex. Ord. No. 12333, §1.3(a)(1), Dec. 4, 1981, 46 F.R. 59941, as amended, set out as a note under section 401 of this title.

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of Title 22.

DEFINITIONS

Pub. L. 112-87, §2, Jan. 3, 2012, 125 Stat. 1877, provided that: “In this Act [see Tables for classification]:

“(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence committees’ means—

“(A) the Select Committee on Intelligence of the Senate; and

“(B) the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) INTELLIGENCE COMMUNITY.—The term ‘intelligence community’ has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).”

Pub. L. 111-259, §2, Oct. 7, 2010, 124 Stat. 2656, provided that: "In this Act [see Tables for classification]:

"(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—

"(A) the Select Committee on Intelligence of the Senate; and

"(B) the Permanent Select Committee on Intelligence of the House of Representatives.

"(2) INTELLIGENCE COMMUNITY.—The term 'intelligence community' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))."

SUBCHAPTER I—COORDINATION FOR NATIONAL SECURITY

§ 402. National Security Council

(a) Establishment; presiding officer; functions; composition

There is established a council to be known as the National Security Council (hereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided*, That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of—

- (1) the President;
- (2) the Vice President;
- (3) the Secretary of State;
- (4) the Secretary of Defense;
- (5) the Secretary of Energy;
- (6) the Director for Mutual Security;
- (7) the Chairman of the National Security Resources Board; and
- (8) the Secretaries and Under Secretaries of other executive departments and of the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) **Additional functions**

In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

- (1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and
- (2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) Executive secretary; appointment; staff employees

The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President. The executive secretary, subject to the direction of the Council, is authorized, subject to the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5, to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) Recommendations and reports

The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

(e) Participation of Chairman or Vice Chairman of Joint Chiefs of Staff

The Chairman (or in his absence the Vice Chairman) of the Joint Chiefs of Staff may, in his role as principal military adviser to the National Security Council and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(f) Participation by Director of National Drug Control Policy

The Director of National Drug Control Policy may, in the role of the Director as principal adviser to the National Security Council on national drug control policy, and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(g) Board for Low Intensity Conflict

The President shall establish within the National Security Council a board to be known as the "Board for Low Intensity Conflict". The principal function of the board shall be to coordinate the policies of the United States for low intensity conflict.

(h) Committee on Foreign Intelligence

(1) There is established within the National Security Council a committee to be known as the Committee on Foreign Intelligence (in this subsection referred to as the "Committee").

(2) The Committee shall be composed of the following:

- (A) The Director of National Intelligence.
- (B) The Secretary of State.
- (C) The Secretary of Defense.
- (D) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.
- (E) Such other members as the President may designate.

(3) The function of the Committee shall be to assist the Council in its activities by—

- (A) identifying the intelligence required to address the national security interests of the United States as specified by the President;
- (B) establishing priorities (including funding priorities) among the programs, projects, and activities that address such interests and requirements; and
- (C) establishing policies relating to the conduct of intelligence activities of the United