

(Pub. L. 103-236, title V, §555, Apr. 30, 1994, 108 Stat. 482.)

**§ 2205. Construction**

Nothing in this chapter shall apply to—

(1) the abandonment or failure to take possession of spoils of war by troops in the field for valid military reasons related to the conduct of the immediate conflict, including the burden of transporting such property or a decision to allow allied forces to take immediate possession of certain property solely for use during an ongoing conflict;

(2) the abandonment or return of any property obtained, borrowed, or requisitioned for temporary use during military operations without intent to retain possession of such property;

(3) the destruction of spoils of war by troops in the field;

(4) the return of spoils of war to previous owners from whom such property had been seized by enemy forces; or

(5) minor articles of personal property which have lawfully become the property of individual members of the armed forces as war trophies pursuant to public written authorization from the Department of Defense.

(Pub. L. 103-236, title V, §556, Apr. 30, 1994, 108 Stat. 483.)

**CHAPTER 40—DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION**

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**§ 2301. Findings**

Congress makes the following findings:

(1) Weapons of mass destruction and related materials and technologies are increasingly available from worldwide sources. Technical information relating to such weapons is readily available on the Internet, and raw materials for chemical, biological, and radiological weapons are widely available for legitimate commercial purposes.

(2) The former Soviet Union produced and maintained a vast array of nuclear, biological, and chemical weapons of mass destruction.

(3) Many of the states of the former Soviet Union retain the facilities, materials, and technologies capable of producing additional quantities of weapons of mass destruction.

(4) The disintegration of the former Soviet Union was accompanied by disruptions of command and control systems, deficiencies in accountability for weapons, weapons-related ma-

terials and technologies, economic hardships, and significant gaps in border control among the states of the former Soviet Union. The problems of organized crime and corruption in the states of the former Soviet Union increase the potential for proliferation of nuclear, radiological, biological, and chemical weapons and related materials.

(5) The conditions described in paragraph (4) have substantially increased the ability of potentially hostile nations, terrorist groups, and individuals to acquire weapons of mass destruction and related materials and technologies from within the states of the former Soviet Union and from unemployed scientists who worked on those programs.

(6) As a result of such conditions, the capability of potentially hostile nations and terrorist groups to acquire nuclear, radiological, biological, and chemical weapons is greater than at any time in history.

(7) The President has identified North Korea, Iraq, Iran, and Libya as hostile states which already possess some weapons of mass destruction and are developing others.

(8) The acquisition or the development and use of weapons of mass destruction is well within the capability of many extremist and terrorist movements, acting independently or as proxies for foreign states.

(9) Foreign states can transfer weapons to or otherwise aid extremist and terrorist movements indirectly and with plausible deniability.

(10) Terrorist groups have already conducted chemical attacks against civilian targets in the United States and Japan, and a radiological attack in Russia.

(11) The potential for the national security of the United States to be threatened by nuclear, radiological, chemical, or biological terrorism must be taken seriously.

(12) There is a significant and growing threat of attack by weapons of mass destruction on targets that are not military targets in the usual sense of the term.

(13) Concomitantly, the threat posed to the citizens of the United States by nuclear, radiological, biological, and chemical weapons delivered by unconventional means is significant and growing.

(14) Mass terror may result from terrorist incidents involving nuclear, radiological, biological, or chemical materials.

(15) Facilities required for production of radiological, biological, and chemical weapons are much smaller and harder to detect than nuclear weapons facilities, and biological and chemical weapons can be deployed by alternative delivery means other than long-range ballistic missiles.

(16) Covert or unconventional means of delivery of nuclear, radiological, biological, and chemical weapons include cargo ships, passenger aircraft, commercial and private vehicles and vessels, and commercial cargo shipments routed through multiple destinations.

(17) Traditional arms control efforts assume large state efforts with detectable manufacturing programs and weapons production programs, but are ineffective in monitoring and

controlling smaller, though potentially more dangerous, unconventional proliferation efforts.

(18) Conventional counterproliferation efforts would do little to detect or prevent the rapid development of a capability to suddenly manufacture several hundred chemical or biological weapons with nothing but commercial supplies and equipment.

(19) The United States lacks adequate planning and countermeasures to address the threat of nuclear, radiological, biological, and chemical terrorism.

(20) The Department of Energy has established a Nuclear Emergency Response Team which is available in case of nuclear or radiological emergencies, but no comparable units exist to deal with emergencies involving biological or chemical weapons or related materials.

(21) State and local emergency response personnel are not adequately prepared or trained for incidents involving nuclear, radiological, biological, or chemical materials.

(22) Exercises of the Federal, State, and local response to nuclear, radiological, biological, or chemical terrorism have revealed serious deficiencies in preparedness and severe problems of coordination.

(23) The development of, and allocation of responsibilities for, effective countermeasures to nuclear, radiological, biological, or chemical terrorism in the United States requires well-coordinated participation of many Federal agencies, and careful planning by the Federal Government and State and local governments.

(24) Training and exercises can significantly improve the preparedness of State and local emergency response personnel for emergencies involving nuclear, radiological, biological, or chemical weapons or related materials.

(25) Sharing of the expertise and capabilities of the Department of Defense, which traditionally has provided assistance to Federal, State, and local officials in neutralizing, dismantling, and disposing of explosive ordnance, as well as radiological, biological, and chemical materials, can be a vital contribution to the development and deployment of countermeasures against nuclear, biological, and chemical weapons of mass destruction.

(26) The United States lacks effective policy coordination regarding the threat posed by the proliferation of weapons of mass destruction.

(Pub. L. 104-201, div. A, title XIV, §1402, Sept. 23, 1996, 110 Stat. 2715.)

#### SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-293, title VII, §701, Oct. 11, 1996, 110 Stat. 3470, provided that: "This title [enacting section 2366 of this title and provisions set out as a note under section 2351 of this title] may be cited as the 'Combatting Proliferation of Weapons of Mass Destruction Act of 1996'."

#### SHORT TITLE

Pub. L. 104-201, div. A, title XIV, §1401, Sept. 23, 1996, 110 Stat. 2715, provided that: "This title [enacting this chapter, section 382 of Title 10, Armed Forces, and sections 175a and 2332d of Title 18, Crimes and Criminal Procedure, amending section 1705 of this title, section 372 of Title 10, and provisions set out as a note under

section 5955 of Title 22, Foreign Relations and Inter-course] may be cited as the ‘Defense Against Weapons of Mass Destruction Act of 1996.’”

Pub. L. 107-228, div. B, title XIII, §1331, Sept. 30, 2002, 116 Stat. 1448, provided that: “This subtitle [subtitle C (§§1331-1339) of title XIII of div. B of Pub. L. 107-228, enacting subchapter IV-A of this chapter] may be cited as the ‘Nonproliferation Assistance Coordination Act of 2002.’”

UTILIZATION OF CONTRIBUTIONS TO INTERNATIONAL NUCLEAR MATERIALS PROTECTION AND COOPERATION PROGRAM AND RUSSIAN PLUTONIUM DISPOSITION PROGRAM

Pub. L. 109-364, div. C, title XXXI, §3114, Oct. 17, 2006, 120 Stat. 2505, as amended by Pub. L. 110-417, div. C, title XXXI, §3115, Oct. 14, 2008, 122 Stat. 4757, provided that:

“(a) IN GENERAL.—The Secretary of Energy may, with the concurrence of the Secretary of State, enter into one or more agreements with any person (including a foreign government, international organization, or multinational entity) that the Secretary of Energy considers appropriate under which the person contributes funds for purposes of the International Nuclear Materials Protection and Cooperation program or Russian Plutonium Disposition program of the National Nuclear Security Administration.

“(b) RETENTION AND USE OF AMOUNTS.—Notwithstanding section 3302 of title 31, United States Code, the Secretary of Energy may retain and use amounts contributed under an agreement under subsection (a) for purposes of the International Nuclear Materials Protection and Cooperation program or Russian Plutonium Disposition program. Amounts so contributed shall be retained in a separate fund established in the Treasury for such purposes and shall be available for use without further appropriation and without fiscal year limitation.

“(c) RETURN OF AMOUNTS NOT USED WITHIN 5 YEARS.—If an amount contributed under an agreement under subsection (a) is not used under this section within 5 years after it was contributed, the Secretary of Energy shall return that amount to the person who contributed it.

“(d) NOTICE TO CONGRESSIONAL DEFENSE COMMITTEES.—Not later than 30 days after the receipt of an amount contributed under subsection (a), the Secretary of Energy shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a notice specifying the purpose and value of the contribution and identifying the person who contributed it. The Secretary may not use the amount until 15 days after the notice is submitted.

“(e) ANNUAL REPORT.—Not later than October 31 of each year, the Secretary of Energy shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the receipt and use of amounts under this section during the preceding fiscal year. Each report for a fiscal year shall set forth—

“(1) a statement of any amounts received under this section, including, for each such amount, the value of the contribution and the person who contributed it;

“(2) a statement of any amounts used under this section, including, for each such amount, the purposes for which the amount was used; and

“(3) a statement of the amounts retained but not used under this section, including, for each such amount, the purposes (if known) for which the Secretary intends to use the amount.

“(f) EXPIRATION.—The authority to accept, retain, and use contributions under this section expires on December 31, 2015.”

COMMISSION TO ASSESS THE THREAT TO THE UNITED STATES FROM ELECTROMAGNETIC PULSE (EMP) ATTACK

Pub. L. 109-163, div. A, title X, §1052(a)-(c), Jan. 6, 2006, 119 Stat. 3434, reestablished the Commission to As-

sess the Threat to the United States from Electromagnetic Pulse Attack (see below) with the same membership that the Commission had as of the date the Commission’s report was submitted, provided that Commissioners could elect to terminate service, and defined “Commission charter”.

Pub. L. 106-398, §1 [[div. A], title XIV], Oct. 30, 2000, 114 Stat. 1654, 1654A-345, as amended by Pub. L. 109-163, div. A, title X, §1052(d)-(j), Jan. 6, 2006, 119 Stat. 3434, 3435; Pub. L. 109-364, div. A, title X, §1073, Oct. 17, 2006, 120 Stat. 2403; Pub. L. 110-181, div. A, title X, §§1063(e)(2), 1075(a), (b), Jan. 28, 2008, 122 Stat. 323, 333; Pub. L. 111-383, div. A, title X, §1075(f)(8), Jan. 7, 2011, 124 Stat. 4376, established the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack, directed the Commission to assess the vulnerability of electric-dependent military systems and other electric-dependent systems in the United States to an electromagnetic pulse attack, to coordinate such work with the Department of Homeland Security, and to submit to Congress, not later than Nov. 30, 2008, a final report on the assessment, and provided that the Commission terminate 30 days after submission of the report.

[Pub. L. 111-383, div. A, title X, §1075(f)(8), Jan. 7, 2011, 124 Stat. 4376, provided that the amendment made by section 1075(f)(8) to section 1075(a) of Pub. L. 110-181, amending Pub. L. 106-398, §1403(a), paraphrased above, is effective as of Jan. 28, 2008, and as if included in Pub. L. 110-181 as enacted.]

DOMESTIC PREPAREDNESS FOR DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION

Pub. L. 105-261, div. A, title XIV, Oct. 17, 1998, 112 Stat. 2167, as amended by Pub. L. 106-65, div. A, title X, §1064, Oct. 5, 1999, 113 Stat. 769, Pub. L. 106-398, §1 [[div. A], title X, §1087(d)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293; Pub. L. 107-107, div. A, title XV, §1514(a), (b)(1), Dec. 28, 2001, 115 Stat. 1273; Pub. L. 107-296, title VIII, §889(b)(2), Nov. 25, 2002, 116 Stat. 2251, provided that:

“SEC. 1401. SHORT TITLE.

“This title may be cited as the ‘Defense Against Weapons of Mass Destruction Act of 1998’.

“SEC. 1402. DOMESTIC PREPAREDNESS FOR RESPONSE TO THREATS OF TERRORIST USE OF WEAPONS OF MASS DESTRUCTION.

“(a) ENHANCED RESPONSE CAPABILITY.—In light of the continuing potential for terrorist use of weapons of mass destruction against the United States and the need to develop a more fully coordinated response to that threat on the part of Federal, State, and local agencies, the President shall act to increase the effectiveness at the Federal, State, and local level of the domestic emergency preparedness program for response to terrorist incidents involving weapons of mass destruction by utilizing the President’s existing authorities to develop an integrated program that builds upon the program established under the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104-201; 110 Stat. 2714; 50 U.S.C. 2301 et seq.).

“(b) REPORT.—Not later than January 31, 1999, the President shall submit to Congress a report containing information on the actions taken at the Federal, State, and local level to develop an integrated program to prevent and respond to terrorist incidents involving weapons of mass destruction.

“SEC. 1403. REPORT ON DOMESTIC EMERGENCY PREPAREDNESS

[Repealed. Pub. L. 107-296, title VIII, §889(b)(2), Nov. 25, 2002, 116 Stat. 2251.]

“SEC. 1404. THREAT AND RISK ASSESSMENTS.

“(a) THREAT AND RISK ASSESSMENTS.—Assistance to Federal, State, and local agencies provided under the program under section 1402 shall include the performance of assessments of the threat and risk of terrorist employment of weapons of mass destruction against

cities and other local areas. Such assessments shall be used by Federal, State, and local agencies to determine the training and equipment requirements under this program and shall be performed as a collaborative effort with State and local agencies.

“(b) CONDUCT OF ASSESSMENTS.—The Department of Justice, as lead Federal agency for domestic crisis management in response to terrorism involving weapons of mass destruction, shall—

“(1) conduct any threat and risk assessment performed under subsection (a) in coordination with appropriate Federal, State, and local agencies; and

“(2) develop procedures and guidance for conduct of the threat and risk assessment in consultation with officials from the intelligence community.

“SEC. 1405. ADVISORY PANEL TO ASSESS DOMESTIC RESPONSE CAPABILITIES FOR TERRORISM INVOLVING WEAPONS OF MASS DESTRUCTION.

“(a) REQUIREMENT FOR PANEL.—The Secretary of Defense, in consultation with the Attorney General, the Secretary of Energy, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency, shall enter into a contract with a federally funded research and development center to establish a panel to assess the capabilities for domestic response to terrorism involving weapons of mass destruction.

“(b) COMPOSITION OF PANEL; SELECTION.—(1) The panel shall be composed of members who shall be private citizens of the United States with knowledge and expertise in emergency response matters.

“(2) Members of the panel shall be selected by the federally funded research and development center in accordance with the terms of the contract established pursuant to subsection (a).

“(c) PROCEDURES FOR PANEL.—The federally funded research and development center shall be responsible for establishing appropriate procedures for the panel, including procedures for selection of a panel chairman.

“(d) DUTIES OF PANEL.—The panel shall—

“(1) assess Federal agency efforts to enhance domestic preparedness for incidents involving weapons of mass destruction;

“(2) assess the progress of Federal training programs for local emergency responses to incidents involving weapons of mass destruction;

“(3) assess deficiencies in programs for response to incidents involving weapons of mass destruction, including a review of unfunded communications, equipment, and planning requirements, and the needs of maritime regions;

“(4) recommend strategies for ensuring effective coordination with respect to Federal agency weapons of mass destruction response efforts, and for ensuring fully effective local response capabilities for weapons of mass destruction incidents; and

“(5) assess the appropriate roles of State and local government in funding effective local response capabilities.

“(e) DEADLINE TO ENTER INTO CONTRACT.—The Secretary of Defense shall enter into the contract required under subsection (a) not later than 60 days after the date of the enactment of this Act [Oct. 17, 1998].

“(f) DEADLINE FOR SELECTION OF PANEL MEMBERS.—Selection of panel members shall be made not later than 30 days after the date on which the Secretary enters into the contract required by subsection (a).

“(g) INITIAL MEETING OF THE PANEL.—The panel shall conduct its first meeting not later than 30 days after the date that all the selections to the panel have been made.

“(h) REPORTS.—(1) Not later than 6 months after the date of the first meeting of the panel, the panel shall submit to the President and to Congress an initial report setting forth its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction.

“(2) Not later than December 15 of each year, beginning in 1999 and ending in 2003, the panel shall submit

to the President and to the Congress a report setting forth its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction.

“(i) COOPERATION OF OTHER AGENCIES.—(1) The panel may secure directly from the Department of Defense, the Department of Energy, the Department of Health and Human Services, the Department of Justice, and the Federal Emergency Management Agency, or any other Federal department or agency information that the panel considers necessary for the panel to carry out its duties.

“(2) The Attorney General, the Secretary of Defense, the Secretary of Energy, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and any other official of the United States shall provide the panel with full and timely cooperation in carrying out its duties under this section.

“(j) FUNDING.—The Secretary of Defense shall provide the funds necessary for the panel to carry out its duties from the funds available to the Department of Defense for weapons of mass destruction preparedness initiatives.

“(k) COMPENSATION OF PANEL MEMBERS.—The provisions of paragraph (4) of section 591(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in section 101(d) of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277; 112 Stat. 2681-212)), shall apply to members of the panel in the same manner as to members of the National Commission on Terrorism under that paragraph.

“(l) TERMINATION OF THE PANEL.—The panel shall terminate five years after the date of the appointment of the member selected as chairman of the panel.

“(m) DEFINITION.—In this section, the term ‘weapon of mass destruction’ has the meaning given that term in section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).”

[Pub. L. 107-107, div. A, title XV, § 1514(b)(2), Dec. 28, 2001, 115 Stat. 1274, provided that: “The amendment made by paragraph (1) [amending section 1405(k) of Pub. L. 105-261, set out above] shall apply with respect to periods of service on the advisory panel under section 1405 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [Pub. L. 105-261] on or after the date of the enactment of this Act [Dec. 28, 2001].”]

[For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.]

[For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

#### EXECUTIVE ORDER NO. 13328

Ex. Ord. No. 13328, Feb. 6, 2004, 69 F.R. 6901, which established the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, was revoked by Ex. Ord. No. 13385, §3(a), Sept. 29, 2005, 70 F.R. 57990, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

### § 2302. Definitions

In this chapter: