

procedures applicable to reports covered by subsection (b) of this section.

(July 26, 1947, ch. 343, title V, § 502, as added Pub. L. 102-88, title VI, § 602(a)(2), Aug. 14, 1991, 105 Stat. 442; amended Pub. L. 107-108, title III, § 305, Dec. 28, 2001, 115 Stat. 1398; Pub. L. 107-306, title III, § 353(b)(3)(B), Nov. 27, 2002, 116 Stat. 2402; Pub. L. 108-458, title I, § 1071(a)(1)(W), (X), Dec. 17, 2004, 118 Stat. 3689; Pub. L. 111-259, title III, § 331(b), Oct. 7, 2010, 124 Stat. 2685.)

CODIFICATION

Section was formerly classified to section 413a of this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 502 of act July 26, 1947, ch. 343, was renumbered section 504 and is classified to section 3094 of this title.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111-259 inserted “(including the legal basis under which the intelligence activity is being or was conducted)” after “concerning intelligence activities”.

2004—Subsec. (a). Pub. L. 108-458, § 1071(a)(1)(W), substituted “Director of National Intelligence” for “Director of Central Intelligence” in introductory provisions.

Subsec. (c). Pub. L. 108-458, § 1071(a)(1)(X), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2002—Subsecs. (a), (b). Pub. L. 107-306 substituted “congressional intelligence committees” for “intelligence committees” wherever appearing.

2001—Pub. L. 107-108 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

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 3001 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 3001 of this title.

FURNISHING OF INTELLIGENCE INFORMATION TO SENATE AND HOUSE SELECT COMMITTEES ON INTELLIGENCE

Pub. L. 102-88, title IV, § 405, Aug. 14, 1991, 105 Stat. 434, provided that:

“(a) FURNISHING OF SPECIFIC INFORMATION.—In accordance with title V of the National Security Act of 1947 [50 U.S.C. 3091 et seq.], the head of any department or agency of the United States involved in any intelligence activities which may pertain to United States military personnel listed as prisoner, missing, or unaccounted for in military actions shall furnish any information or documents in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the Permanent Select Committee on Intelligence of the House of Representatives or the Select Committee on Intelligence of the Senate.

“(b) ACCESS BY COMMITTEES AND MEMBERS OF CONGRESS.—In accordance with Senate Resolution 400, Ninety-Fourth Congress, and House Resolution 658, Ninety-Fifth Congress, the committees named in subsection (a) shall, upon request and under such regulations as the committees have prescribed to protect the classification of such information, make any information described in subsection (a) available to any other

committee or any other Member of Congress and appropriately cleared staff.”

§ 3093. Presidential approval and reporting of covert actions

(a) Presidential findings

The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government unless the President determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions:

(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President’s decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than 48 hours after the decision is made.

(2) Except as permitted by paragraph (1), a finding may not authorize or sanction a covert action, or any aspect of any such action, which already has occurred.

(3) Each finding shall specify each department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such action. Any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a covert action shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency, or entity, to govern such participation.

(4) Each finding shall specify whether it is contemplated that any third party which is not an element of, or a contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action concerned on behalf of the United States.

(5) A finding may not authorize any action that would violate the Constitution or any statute of the United States.

(b) Reports to congressional intelligence committees; production of information

To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of National Intelligence and the heads of all departments, agencies, and entities of the United States Government involved in a covert action—

(1) shall keep the congressional intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on

behalf of, any department, agency, or entity of the United States Government, including significant failures; and

(2) shall furnish to the congressional intelligence committees any information or material concerning covert actions (including the legal basis under which the covert action is being or was conducted) which is in the possession, custody, or control of any department, agency, or entity of the United States Government and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.

(c) Timing of reports; access to finding

(1) The President shall ensure that any finding approved pursuant to subsection (a) of this section shall be reported in writing to the congressional intelligence committees as soon as possible after such approval and before the initiation of the covert action authorized by the finding, except as otherwise provided in paragraph (2) and paragraph (3).

(2) If the President determines that it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, the finding may be reported to the chairmen and ranking minority members of the congressional intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President.

(3) Whenever a finding is not reported pursuant to paragraph (1) or (2) of this section,¹ the President shall fully inform the congressional intelligence committees in a timely fashion and shall provide a statement of the reasons for not giving prior notice.

(4) In a case under paragraph (1), (2), or (3), a copy of the finding, signed by the President, shall be provided to the chairman of each congressional intelligence committee.

(5)(A) When access to a finding, or a notification provided under subsection (d)(1), is limited to the Members of Congress specified in paragraph (2), a written statement of the reasons for limiting such access shall also be provided.

(B) Not later than 180 days after a statement of reasons is submitted in accordance with subparagraph (A) or this subparagraph, the President shall ensure that—

(i) all members of the congressional intelligence committees are provided access to the finding or notification; or

(ii) a statement of reasons that it is essential to continue to limit access to such finding or such notification to meet extraordinary circumstances affecting vital interests of the United States is submitted to the Members of Congress specified in paragraph (2).

(d) Changes in previously approved actions

(1) The President shall ensure that the congressional intelligence committees, or, if applicable, the Members of Congress specified in subsection (c)(2) of this section, are notified in writing of any significant change in a previously ap-

proved covert action, or any significant undertaking pursuant to a previously approved finding, in the same manner as findings are reported pursuant to subsection (c) of this section.

(2) In determining whether an activity constitutes a significant undertaking for purposes of paragraph (1), the President shall consider whether the activity—

(A) involves significant risk of loss of life;

(B) requires an expansion of existing authorities, including authorities relating to research, development, or operations;

(C) results in the expenditure of significant funds or other resources;

(D) requires notification under section 3094 of this title;

(E) gives rise to a significant risk of disclosing intelligence sources or methods; or

(F) presents a reasonably foreseeable risk of serious damage to the diplomatic relations of the United States if such activity were disclosed without authorization.

(e) “Covert action” defined

As used in this subchapter, the term “covert action” means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include—

(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

(2) traditional diplomatic or military activities or routine support to such activities;

(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

(4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.

(f) Prohibition on covert actions intended to influence United States political processes, etc.

No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

(g) Notice and general description where access to finding or notification limited; maintenance of records and written statements

(1) In any case where access to a finding reported under subsection (c) or notification provided under subsection (d)(1) is not made available to all members of a congressional intelligence committee in accordance with subsection (c)(2), the President shall notify all members of such committee that such finding or such notification has been provided only to the members specified in subsection (c)(2).

(2) In any case where access to a finding reported under subsection (c) or notification provided under subsection (d)(1) is not made available to all members of a congressional intelligence committee in accordance with subsection (c)(2), the President shall provide to all

¹ So in original. Probably should be “subsection.”

members of such committee a general description regarding the finding or notification, as applicable, consistent with the reasons for not yet fully informing all members of such committee.

(3) The President shall maintain—

(A) a record of the members of Congress to whom a finding is reported under subsection (c) or notification is provided under subsection (d)(1) and the date on which each member of Congress receives such finding or notification; and

(B) each written statement provided under subsection (c)(5).

(July 26, 1947, ch. 343, title V, § 503, as added Pub. L. 102-88, title VI, § 602(a)(2), Aug. 14, 1991, 105 Stat. 442; amended Pub. L. 107-306, title III, § 353(b)(3)(C), (8), Nov. 27, 2002, 116 Stat. 2402; Pub. L. 108-458, title I, § 1071(a)(1)(Y), Dec. 17, 2004, 118 Stat. 3689; Pub. L. 111-259, title III, § 331(c), Oct. 7, 2010, 124 Stat. 2685.)

CODIFICATION

Section was formerly classified to section 413b of this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 503 of act July 26, 1947, ch. 343, was renumbered section 505 and is classified to section 3095 of this title.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111-259, § 331(c)(1), inserted “(including the legal basis under which the covert action is being or was conducted)” before “which is in the possession”.

Subsec. (c)(1). Pub. L. 111-259, § 331(c)(2)(A), inserted “in writing” after “be reported”.

Subsec. (c)(4). Pub. L. 111-259, § 331(c)(2)(B), redesignated second sentence of par. (4) as (5)(A).

Subsec. (c)(5)(A). Pub. L. 111-259, § 331(c)(2)(C)(i), inserted “, or a notification provided under subsection (d)(1),” before “is limited” and “written” before “statement”.

Pub. L. 111-259, § 331(c)(2)(B), redesignated second sentence of par. (4) as (5)(A).

Subsec. (c)(5)(B). Pub. L. 111-259, § 331(c)(2)(C)(ii), added subpar. (B).

Subsec. (d). Pub. L. 111-259, § 331(c)(3), designated existing provisions as par. (1), inserted “in writing” after “notified”, and added par. (2).

Subsec. (g). Pub. L. 111-259, § 331(c)(4), added subsec. (g).

2004—Subsec. (b). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence” in introductory provisions.

2002—Subsecs. (b), (c)(1) to (3). Pub. L. 107-306, § 353(b)(3)(C), substituted “congressional intelligence committees” for “intelligence committees” wherever appearing.

Subsec. (c)(4). Pub. L. 107-306, § 353(b)(8), substituted “congressional intelligence committee” for “intelligence committee”.

Subsec. (d). Pub. L. 107-306, § 353(b)(3)(C), substituted “congressional intelligence committees” for “intelligence committees”.

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 3001 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 3001 of this title.

§ 3094. Funding of intelligence activities

(a) Obligations and expenditures for intelligence or intelligence-related activity; prerequisites

Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 3093 of this title concerning any significant anticipated intelligence activity, the Director of the Central Intelligence Agency has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

(B) the use of such funds for such activity supports an emergent need, improves program effectiveness, or increases efficiency; and

(C) the Director of National Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31.

(b) Activities denied funding by Congress

Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

(c) Presidential finding required for expenditure of funds on covert action

No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 3093(e) of this title, unless and until a Presidential finding required by subsection (a) of section 3093 of this title has been signed or otherwise issued in accordance with that subsection.

(d) Report to Congressional committees required for expenditure of nonappropriated funds for intelligence activity

(1) Except as otherwise specifically provided by law, funds available to an intelligence agency that are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if those funds are used for activities reported to the appropriate congressional committees pursuant to procedures which identify—