

§ 3038. Responsibilities of Secretary of Defense pertaining to National Intelligence Program

(a) In general

Consistent with sections 3023 and 3024 of this title, the Secretary of Defense, in consultation with the Director of National Intelligence, shall—

(1) ensure that the budgets of the elements of the intelligence community within the Department of Defense are adequate to satisfy the overall intelligence needs of the Department of Defense, including the needs of the chairman¹ of the Joint Chiefs of Staff and the commanders of the unified and specified commands and, wherever such elements are performing governmentwide functions, the needs of other departments and agencies;

(2) ensure appropriate implementation of the policies and resource decisions of the Director by elements of the Department of Defense within the National Intelligence Program;

(3) ensure that the tactical intelligence activities of the Department of Defense complement and are compatible with intelligence activities under the National Intelligence Program;

(4) ensure that the elements of the intelligence community within the Department of Defense are responsive and timely with respect to satisfying the needs of operational military forces;

(5) eliminate waste and unnecessary duplication among the intelligence activities of the Department of Defense; and

(6) ensure that intelligence activities of the Department of Defense are conducted jointly where appropriate.

(b) Responsibility for performance of specific functions

Consistent with sections 3023 and 3024 of this title, the Secretary of Defense shall ensure—

(1) through the National Security Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the conduct of signals intelligence activities and shall ensure that the product is disseminated in a timely manner to authorized recipients;

(2) through the National Geospatial-Intelligence Agency (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense—

(A) for carrying out tasking of imagery collection;

(B) for the coordination of imagery processing and exploitation activities;

(C) for ensuring the dissemination of imagery in a timely manner to authorized recipients; and

(D) notwithstanding any other provision of law, for—

(i) prescribing technical architecture and standards related to imagery intelligence

and geospatial information and ensuring compliance with such architecture and standards; and

(ii) developing and fielding systems of common concern related to imagery intelligence and geospatial information;

(3) through the National Reconnaissance Office (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community;

(4) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified system within the Department of Defense for the production of timely, objective military and military-related intelligence, based upon all sources available to the intelligence community, and shall ensure the appropriate dissemination of such intelligence to authorized recipients;

(5) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), effective management of Department of Defense human intelligence and counterintelligence activities, including defense attaches; and

(6) that the military departments maintain sufficient capabilities to collect and produce intelligence to meet—

(A) the requirements of the Director of National Intelligence;

(B) the requirements of the Secretary of Defense or the Chairman of the Joint Chiefs of Staff;

(C) the requirements of the unified and specified combatant commands and of joint operations; and

(D) the specialized requirements of the military departments for intelligence necessary to support tactical commanders, military planners, the research and development process, the acquisition of military equipment, and training and doctrine.

(c) Expenditure of funds by the Defense Intelligence Agency

(1) Subject to paragraphs (2) and (3), the Director of the Defense Intelligence Agency may expend amounts made available to the Director under the National Intelligence Program for human intelligence and counterintelligence activities for objects of a confidential, extraordinary, or emergency nature, without regard to the provisions of law or regulation relating to the expenditure of Government funds.

(2) The Director of the Defense Intelligence Agency may not expend more than five percent of the amounts made available to the Director under the National Intelligence Program for human intelligence and counterintelligence activities for a fiscal year for objects of a confidential, extraordinary, or emergency nature in accordance with paragraph (1) during such fiscal year unless—

¹ So in original. Probably should be capitalized.

(A) the Director notifies the congressional intelligence committees of the intent to expend the amounts; and

(B) 30 days have elapsed from the date on which the Director notifies the congressional intelligence committees in accordance with subparagraph (A).

(3) For each expenditure referred to in paragraph (1), the Director shall certify that such expenditure was made for an object of a confidential, extraordinary, or emergency nature.

(4) Not later than December 31 of each year, the Director of the Defense Intelligence Agency shall submit to the congressional intelligence committees a report on any expenditures made during the preceding fiscal year in accordance with paragraph (1).

(d) Use of elements of Department of Defense

The Secretary of Defense, in carrying out the functions described in this section, may use such elements of the Department of Defense as may be appropriate for the execution of those functions, in addition to, or in lieu of, the elements identified in this section.

(July 26, 1947, ch. 343, title I, § 105, as added Pub. L. 102-496, title VII, § 706(a), Oct. 24, 1992, 106 Stat. 3194; amended Pub. L. 103-359, title V, § 501(a)(2), Oct. 14, 1994, 108 Stat. 3428; Pub. L. 104-201, div. A, title XI, § 1114(a), Sept. 23, 1996, 110 Stat. 2684; Pub. L. 104-293, title VIII, § 808, Oct. 11, 1996, 110 Stat. 3481; Pub. L. 107-306, title VIII, § 811(b)(1)(A), Nov. 27, 2002, 116 Stat. 2421; Pub. L. 108-136, div. A, title IX, § 921(e)(2), Nov. 24, 2003, 117 Stat. 1569; Pub. L. 108-177, title III, § 361(a), Dec. 13, 2003, 117 Stat. 2625; Pub. L. 108-458, title I, §§ 1071(a)(1)(E), (F), (2)(A), 1072(a)(2), (3), 1074(b)(1)(B), Dec. 17, 2004, 118 Stat. 3689, 3690, 3692, 3694; Pub. L. 112-18, title IV, § 411, June 8, 2011, 125 Stat. 228.)

CODIFICATION

Section was formerly classified to section 403-5 of this title prior to editorial reclassification and renumbering as this section. Some section numbers of this title referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification.

AMENDMENTS

2011—Subsec. (b)(5). Pub. L. 112-18, § 411(1), inserted “and counterintelligence” after “human intelligence”.

Subsecs. (c), (d). Pub. L. 112-18, § 411(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

2004—Pub. L. 108-458, § 1074(b)(1)(B)(ii), struck out “Foreign” before “Intelligence” in section catchline.

Subsec. (a). Pub. L. 108-458, § 1072(a)(2), substituted “Consistent with sections 403 and 403-1 of this title, the Secretary” for “The Secretary” in introductory provisions.

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

Subsec. (a)(2). Pub. L. 108-458, § 1074(b)(1)(B)(i), substituted “National Intelligence Program” for “National Foreign Intelligence Program”.

Pub. L. 108-458, § 1071(a)(2)(A), struck out “of Central Intelligence” after “Director”.

Subsec. (a)(3). Pub. L. 108-458, § 1074(b)(1)(B)(i), substituted “National Intelligence Program” for “National Foreign Intelligence Program”.

Subsec. (b). Pub. L. 108-458, § 1072(a)(3), substituted “403 and 403-1” for “403-3 and 403-4” in introductory provisions.

Subsec. (b)(6)(A). Pub. L. 108-458, § 1071(a)(1)(F), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2003—Subsec. (b)(2). Pub. L. 108-136, § 921(e)(2), substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

Subsec. (d). Pub. L. 108-177 struck out subsec. (d) which related to annual evaluations of performance and responsiveness of certain elements of the intelligence community.

Subsec. (d)(3). Pub. L. 108-136, § 921(e)(2), substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

2002—Subsec. (d). Pub. L. 107-306 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “The Director of Central Intelligence, in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, shall submit each year to the Committee on Foreign Intelligence of the National Security Council and the appropriate congressional committees (as defined in section 404d(c) of this title) an evaluation of the performance and the responsiveness of the National Security Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency in meeting their national missions.”

1996—Subsec. (a). Pub. L. 104-293, § 808(1), inserted “, in consultation with the Director of Central Intelligence,” after “Secretary of Defense” in introductory provisions.

Subsec. (b)(2). Pub. L. 104-201 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “through the Central Imagery Office (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense for carrying out tasking of imagery collection, for the coordination of imagery processing and exploitation activities, and for ensuring the dissemination of imagery in a timely manner to authorized recipients;”.

Subsec. (d). Pub. L. 104-293, § 808(2), added subsec. (d).
1994—Subsec. (b)(2). Pub. L. 103-359 substituted “the Central Imagery Office” for “a central imagery authority”.

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.

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.

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.

DEPARTMENT OF DEFENSE STRATEGY FOR OPEN-SOURCE INTELLIGENCE

Pub. L. 109-163, div. A, title IX, § 931, Jan. 6, 2006, 119 Stat. 3411, provided that:

“(a) FINDINGS.—Congress makes the following findings:

“(1) Open-source intelligence (OSINT) is intelligence that is produced from publicly available information and is collected, exploited, and disseminated in a timely manner to an appropriate audience

for the purpose of addressing a specific intelligence requirement.

“(2) With the Information Revolution, the amount, significance, and accessibility of open-source information has expanded significantly, but the intelligence community has not expanded its exploitation efforts and systems to produce open-source intelligence.

“(3) The production of open-source intelligence is a valuable intelligence discipline that must be integrated into intelligence tasking, collection, processing, exploitation, and dissemination to ensure that United States policymakers are fully and completely informed.

“(4) The dissemination and use of validated open-source intelligence inherently enables information sharing since open-source intelligence is produced without the use of sensitive sources and methods. Open-source intelligence products can be shared with the American public and foreign allies because of the unclassified nature of open-source intelligence.

“(5) The National Commission on Terrorist Attacks Upon the United States (popularly referred to as the ‘9/11 Commission’), in its final report released on July 22, 2004, identified shortfalls in the ability of the United States to use all-source intelligence, a large component of which is open-source intelligence.

“(6) In the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) [see Tables for classification], Congress calls for coordination of the collection, analysis, production, and dissemination of open-source intelligence.

“(7) The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, in its report to the President released on March 31, 2005, found that ‘the need for exploiting open-source material is greater now than ever before,’ but that ‘the Intelligence Community’s open source programs have not expanded commensurate with either the increase in available information or with the growing importance of open source data to today’s problems’.

“(b) DEPARTMENT OF DEFENSE STRATEGY FOR OPEN-SOURCE INTELLIGENCE.—

“(1) DEVELOPMENT OF STRATEGY.—The Secretary of Defense shall develop a strategy for the purpose of integrating open-source intelligence into the Defense intelligence process. The strategy shall be known as the ‘Defense Strategy for Open-Source Intelligence’. The strategy shall be incorporated within the larger Defense intelligence strategy.

“(2) SUBMISSION.—The Secretary shall submit to Congress a report setting forth the strategy developed under paragraph (1). The report shall be submitted not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006].

“(c) MATTERS TO BE INCLUDED.—The strategy under subsection (b) shall include the following:

“(1) A plan for providing funds over the period of the future-years defense program for the development of a robust open-source intelligence capability for the Department of Defense, with particular emphasis on exploitation and dissemination.

“(2) A description of how management of the collection of open-source intelligence is currently conducted within the Department of Defense and how that management can be improved.

“(3) A description of the tools, systems, centers, organizational entities, and procedures to be used within the Department of Defense to perform open-source intelligence tasking, collection, processing, exploitation, and dissemination.

“(4) A description of proven tradecraft for effective exploitation of open-source intelligence, to include consideration of operational security.

“(5) A detailed description on how open-source intelligence will be fused with all other intelligence sources across the Department of Defense.

“(6) A description of—
“(A) a training plan for Department of Defense intelligence personnel with respect to open-source intelligence; and

“(B) open-source intelligence guidance for Department of Defense intelligence personnel.

“(7) A plan to incorporate the function of oversight of open-source intelligence—

“(A) into the Office of the Undersecretary of Defense for Intelligence; and

“(B) into service intelligence organizations.

“(8) A plan to incorporate and identify an open-source intelligence specialty into personnel systems of the Department of Defense, including military personnel systems.

“(9) A plan for the use of intelligence personnel of the reserve components to augment and support the open-source intelligence mission.

“(10) A plan for the use of the Open-Source Information System for the purpose of exploitation and dissemination of open-source intelligence.”

ROLE OF DIRECTOR OF CENTRAL INTELLIGENCE IN EXPERIMENTAL PERSONNEL PROGRAM FOR CERTAIN SCIENTIFIC AND TECHNICAL PERSONNEL

Pub. L. 106-567, title V, §501, Dec. 27, 2000, 114 Stat. 2850, as amended by Pub. L. 108-136, div. A, title IX, §921(g), Nov. 24, 2003, 117 Stat. 1570, provided that: “If the Director of Central Intelligence requests that the Secretary of Defense exercise any authority available to the Secretary under section 1101(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 5 U.S.C. 3104 note) to carry out a program of special personnel management authority at the National Geospatial-Intelligence Agency and the National Security Agency in order to facilitate recruitment of eminent experts in science and engineering at such agencies, the Secretary shall respond to such request not later than 30 days after the date of such request.”

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of this title.]

§ 3039. Assistance to United States law enforcement agencies

(a) Authority to provide assistance

Subject to subsection (b) of this section, elements of the intelligence community may, upon the request of a United States law enforcement agency, collect information outside the United States about individuals who are not United States persons. Such elements may collect such information notwithstanding that the law enforcement agency intends to use the information collected for purposes of a law enforcement investigation or counterintelligence investigation.

(b) Limitation on assistance by elements of Department of Defense

(1) With respect to elements within the Department of Defense, the authority in subsection (a) of this section applies only to the following:

- (A) The National Security Agency.
- (B) The National Reconnaissance Office.
- (C) The National Geospatial-Intelligence Agency.
- (D) The Defense Intelligence Agency.

(2) Assistance provided under this section by elements of the Department of Defense may not