

CODIFICATION

Section was formerly classified in a note under section 402 of this title prior to editorial reclassification as this section.

AMENDMENTS

1981—Pub. L. 97-89 added subsecs. (a) to (h) and redesignated existing provisions as subsec. (i).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-89 effective Oct. 1, 1981, see section 806 of Pub. L. 97-89, set out as an Effective Date note under section 1621 of Title 10, Armed Forces.

§ 3609. Enhancement of security authorities**(a) Law enforcement authority**

(1) The Director of the National Security Agency may authorize agency personnel within the United States to perform the same functions as officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40, with the powers set forth in that section, except that such personnel shall perform such functions and exercise such powers—

(A) at the National Security Agency Headquarters complex and at any facilities and protected property which are solely under the administration and control of, or are used exclusively by, the National Security Agency; and

(B) in the streets, sidewalks, and the open areas within the zone beginning at the outside boundary of such facilities or protected property and extending outward 500 feet.

(2) The performance of functions and exercise of powers under subparagraph (B) of paragraph (1) shall be limited to those circumstances where such personnel can identify specific and articulable facts giving such personnel reason to believe that the performance of such functions and exercise of such powers is reasonable to protect against physical damage or injury, or threats of physical damage or injury, to agency installations, property, or employees.

(3) Nothing in this subsection shall be construed to preclude, or limit in any way, the authority of any Federal, State, or local law enforcement agency, or any other Federal police or Federal protective service.

(4) The rules and regulations enforced by such personnel shall be the rules and regulations prescribed by the Director and shall only be applicable to the areas referred to in subparagraph (A) of paragraph (1).

(5) Agency personnel authorized by the Director under paragraph (1) may transport an individual apprehended under the authority of this section from the premises at which the individual was apprehended, as described in subparagraph (A) or (B) of paragraph (1), for the purpose of transferring such individual to the custody of law enforcement officials. Such transportation may be provided only to make a transfer of custody at a location within 30 miles of the premises described in subparagraphs (A) and (B) of paragraph (1).

(b) Penalties

The Director of the National Security Agency is authorized to establish penalties for violations of the rules or regulations prescribed by

the Director under subsection (a). Such penalties shall not exceed those specified in section 1315(c)(2) of title 40.

(c) Identification of designated personnel

Agency personnel designated by the Director of the National Security Agency under subsection (a) shall be clearly identifiable as United States Government security personnel while engaged in the performance of the functions to which subsection (a) refers.

(d) Tort liability

(1) Notwithstanding any other provision of law, agency personnel designated by the Director of the National Security Agency under subsection (a) shall be considered for purposes of chapter 171 of title 28, or any other provision of law relating to tort liability, to be acting within the scope of their office or employment when such agency personnel take reasonable action, which may include the use of force, to—

(A) protect an individual in the presence of such agency personnel from a crime of violence;

(B) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm;

(C) prevent the escape of any individual whom such agency personnel reasonably believe to have committed a crime of violence in the presence of such agency personnel; or

(D) transport an individual pursuant to subsection (a)(2).

(2) Paragraph (1) shall not affect the authorities of the Attorney General under section 2679 of title 28.

(3) In this subsection, the term “crime of violence” has the meaning given that term in section 16 of title 18.

(Pub. L. 86-36, §11, as added Pub. L. 96-450, title IV, §402(a)(1), Oct. 14, 1980, 94 Stat. 1978; amended Pub. L. 107-108, title V, §506, Dec. 28, 2001, 115 Stat. 1406; Pub. L. 107-306, title VIII, §841(f), Nov. 27, 2002, 116 Stat. 2432; Pub. L. 108-177, title III, §377(c), title V, §501, Dec. 13, 2003, 117 Stat. 2630, 2633; Pub. L. 112-87, title IV, §421, Jan. 3, 2012, 125 Stat. 1893.)

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AMENDMENTS

2012—Subsec. (a)(5). Pub. L. 112-87, §421(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “Not later than July 1 each year through 2004, the Director shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report that describes in detail the exercise of the authority granted by this subsection and the underlying facts supporting the exercise of such authority, during the preceding fiscal year. The Director shall make each such report available to the Inspector General of the National Security Agency.”

Subsec. (d)(1)(D). Pub. L. 112-87, §421(b), added subpar. (D).

2003—Subsec. (a)(1). Pub. L. 108-177, §377(c)(1), substituted “officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40” for “special policemen of the General Services

Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes' (40 U.S.C. 318)".

Subsec. (b). Pub. L. 108-177, §377(c)(2), substituted "section 1315(c)(2) of title 40" for "the fourth section of the Act referred to in subsection (a) (40 U.S.C. 318c)".

Subsec. (d). Pub. L. 108-177, §501, added subsec. (d).

2002—Subsec. (a)(5). Pub. L. 107-306 inserted "through 2004" after "Not later than July 1 each year".

2001—Pub. L. 107-108 amended section generally. Prior to amendment, section read as follows: "The Administrator of General Services, upon the application of the Director of the National Security Agency, may provide for the protection in accordance with section 318b of title 40, of certain facilities (as designated by the Director of such Agency) which are under the administration and control of, or are used by, the National Security Agency in the same manner as if such facilities were property of the United States over which the United States has acquired exclusive or concurrent criminal jurisdiction."

§ 3610. Senior Cryptologic Executive Service

(a) Establishment; applicable personnel provisions

(1) The Secretary of Defense (or his designee) may by regulation establish a personnel system for senior civilian cryptologic personnel in the National Security Agency to be known as the Senior Cryptologic Executive Service. The regulations establishing the Senior Cryptologic Executive Service shall—

(A) meet the requirements set forth in section 3131 of title 5 for the Senior Executive Service;

(B) provide that positions in the Senior Cryptologic Executive Service meet requirements that are consistent with the provisions of section 3132(a)(2) of such title;

(C) provide, without regard to section 2,1 rates of pay for the Senior Cryptologic Executive Service that are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 of such title, and that are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

(D) provide a performance appraisal system for the Senior Cryptologic Executive Service that conforms to the provisions of subchapter II of chapter 43 of such title;

(E) provide for removal consistent with section 3592 of such title, and removal or suspension consistent with subsections (a), (b), and (c) of section 7543 of such title (except that any hearing or appeal to which a member of the Senior Cryptologic Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Secretary of Defense or his designee);

(F) permit the payment of performance awards to members of the Senior Cryptologic Executive Service consistent with the provisions applicable to performance awards under section 5384 of such title;

(G) provide that members of the Senior Cryptologic Executive Service may be granted

sabbatical leaves consistent with the provisions of section 3396(c) of such title; and

(H) provide for the recertification of members of the Senior Cryptologic Executive Service consistent with the provisions of section 3393a¹ of such title.

(2) Except as otherwise provided in subsection (a), the Secretary of Defense (or his designee) may—

(A) make applicable to the Senior Cryptologic Executive Service any of the provisions of title 5 applicable to applicants for or members of the Senior Executive Service; and

(B) appoint, promote, and assign individuals to positions established within the Senior Cryptologic Executive Service without regard to the provisions of title 5 governing appointments and other personnel actions in the competitive service.

(3) The President, based on the recommendations of the Secretary of Defense, may award ranks to members of the Senior Cryptologic Executive Service in a manner consistent with the provisions of section 4507 of title 5.

(4) Notwithstanding any other provision of this section, the Director of the National Security Agency may detail or assign any member of the Senior Cryptologic Executive Service to serve in a position outside the National Security Agency in which the member's expertise and experience may be of benefit to the National Security Agency or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the Senior Cryptologic Executive Service.

(b) Merit pay system

The Secretary of Defense (or his designee) may by regulation establish a merit pay system for such employees of the National Security Agency as the Secretary of Defense (or his designee) considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401(a) of title 5.

(c) Maximum pay for fiscal year

Nothing in this section shall be construed to allow the aggregate amount payable to a member of the Senior Cryptologic Executive Service under this section during any fiscal year to exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such year.

(Pub. L. 86-36, §12, as added Pub. L. 97-89, title VI, §603, Dec. 4, 1981, 95 Stat. 1156; amended Pub. L. 101-194, title V, §506(c)(2), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 104-106, div. A, title X, §1064(b), Feb. 10, 1996, 110 Stat. 445.)

REFERENCES IN TEXT

Section 2, referred to in subsec. (a)(1)(C), meant section 2 of Pub. L. 86-36, May 29, 1959, 73 Stat. 63; Pub. L. 87-367, title II, §201, Oct. 4, 1961, 75 Stat. 789; Sept. 23, 1950, ch. 1024, title III, §306(a), as added Pub. L. 88-290, Mar. 26, 1964, 78 Stat. 170; Pub. L. 88-426, title III, §306(h), Aug. 14, 1964, 78 Stat. 430; Pub. L. 88-631, §3(d), Oct. 6, 1964, 78 Stat. 1008; Pub. L. 89-632, §1(e)(1), Oct. 8, 1966, 80 Stat. 878; Pub. L. 102-496, title IV, §405, Oct. 24, 1992, 106 Stat. 3186, which related to authority of Sec-

¹ See References in Text note below.