

and maintain policies and procedures that meet requirements under the national industrial security program. In developing the plan, the Secretary shall consider whether or not covered entities, or any category of covered entities, should be required to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.

“(b) COVERED ENTITY.—A covered entity under this section is an entity—

“(1) to which the Department of Defense has granted a facility clearance; and

“(2) that is not subject to foreign ownership control or influence mitigation measures.

“(c) GUIDANCE.—The Secretary of Defense shall issue guidance, including appropriate compliance mechanisms, to implement the requirement in subsection (a). To the extent determined appropriate by the Secretary, the guidance shall require covered entities, or any category of covered entities, to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.

“(d) REPORT.—Not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the plan developed pursuant to subsection (a) and the guidance issued pursuant to subsection (c). The report shall specifically address the rationale for the Secretary’s decision on whether or not to require covered entities, or any category of covered entities, to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.”

SUBMISSION OF FIRST BIENNIAL REPORT

Pub. L. 110-417, [div. A], title VIII, §845(b), Oct. 14, 2008, 122 Stat. 4542, required the first biennial report under former subsec. (f) of this section to be submitted no later than Sept. 1, 2009.

§ 429. Appropriations for Defense intelligence elements: accounts for transfers; transfer authority

(a) ACCOUNTS FOR APPROPRIATIONS FOR DEFENSE INTELLIGENCE ELEMENTS.—The Secretary of Defense may transfer appropriations of the Department of Defense which are available for the activities of Defense intelligence elements to an account or accounts established for receipt of such transfers. Each such account may also receive transfers from the Director of National Intelligence if made pursuant to section 102A of the National Security Act of 1947 (50 U.S.C. 3024) and transfers and reimbursements arising from transactions, as authorized by law, between a Defense intelligence element and another entity. Appropriation balances in each such account may be transferred back to the account or accounts from which such appropriations originated as appropriation refunds.

(b) RECORDATION OF TRANSFERS.—Transfers made pursuant to subsection (a) shall be recorded as expenditure transfers.

(c) AVAILABILITY OF FUNDS.—Funds transferred pursuant to subsection (a) shall remain available for the same time period and for the same purpose as the appropriation from which transferred, and shall remain subject to the same limitations provided in the law making the appropriation.

(d) OBLIGATION AND EXPENDITURE OF FUNDS.—Unless otherwise specifically authorized by law, funds transferred pursuant to subsection (a)

shall only be obligated and expended in accordance with chapter 15 of title 31 and all other applicable provisions of law.

(e) DEFENSE INTELLIGENCE ELEMENT DEFINED.—In this section, the term “Defense intelligence element” means any of the Department of Defense agencies, offices, and elements included within the definition of “intelligence community” under section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(Added Pub. L. 112-87, title IV, §433(a), Jan. 3, 2012, 125 Stat. 1894; amended Pub. L. 113-291, div. A, title X, §1071(c)(5), (f)(6), Dec. 19, 2014, 128 Stat. 3508, 3510.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-291, §1071(c)(5)(A), substituted “section 102A of the National Security Act of 1947 (50 U.S.C. 3024)” for “Section 102A of the National Security Act of 1947 (50 U.S.C. 403-1)”.

Subsec. (c). Pub. L. 113-291, §1071(f)(6), substituted “law” for “act”.

Subsec. (e). Pub. L. 113-291, §1071(c)(5)(B), substituted “(50 U.S.C. 3003(4))” for “(50 U.S.C. 401a(4))”.

§ 430. Tactical Exploitation of National Capabilities Executive Agent

(a) DESIGNATION.—The Under Secretary of Defense for Intelligence shall designate a civilian employee of the Department or a member of the armed forces to serve as the Tactical Exploitation of National Capabilities Executive Agent.

(b) DUTIES.—The Executive Agent designated under subsection (a) shall—

(1) report directly to the Under Secretary of Defense for Intelligence;

(2) work with the combatant commands, military departments, and the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) to—

(A) develop methods to increase warfighter effectiveness through the exploitation of national capabilities; and

(B) promote cross-domain integration of such capabilities into military operations, training, intelligence, surveillance, and reconnaissance activities.

(Added Pub. L. 113-291, div. A, title XVI, §1621(a), Dec. 19, 2014, 128 Stat. 3631.)

§ 430a. Executive agent for management and oversight of alternative compensatory control measures

(a) EXECUTIVE AGENT.—The Secretary of Defense shall designate a senior official from among the personnel of the Department of Defense to act as the Department of Defense executive agent for the management and oversight of alternative compensatory control measures.

(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—The Secretary shall prescribe the roles, responsibilities, and authorities of the executive agent designated under subsection (a). Such roles, responsibilities, and authorities shall include the development of an annual management and oversight plan for Department-wide accountability and reporting to the congressional defense committees.

(Added Pub. L. 114-92, div. A, title X, §1083(a)(1), Nov. 25, 2015, 129 Stat. 1003.)

§ 430b. Executive agent for open-source intelligence tools

(a) DESIGNATION.—Not later than April 1, 2016, the Secretary of Defense shall designate a senior official of the Department of Defense to serve as the executive agent for the Department for open-source intelligence tools.

(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—(1) Not later than July 1, 2016, in accordance with Directive 5101.1, the Secretary shall prescribe the roles, responsibilities, and authorities of the executive agent designated under subsection (a).

(2) The roles and responsibilities of the executive agent designated under subsection (a) shall include the following:

(A) Developing and maintaining a comprehensive list of open-source intelligence tools and technical standards.

(B) Establishing priorities for the development, acquisition, and integration of open-source intelligence tools into the intelligence enterprise, and other command and control systems as needed.

(C) Certifying all open-source intelligence tools with respect to compliance with the standards required by the framework and guidance for the Intelligence Community Information Technology Enterprise, the Defense Intelligence Information Enterprise, and the Joint Information Environment.

(D) Assessing and making recommendations regarding the protection of privacy in the acquisition, analysis, and dissemination of open-source information available around the world.

(E) Performing such other assessments or analyses as the Secretary considers appropriate.

(c) SUPPORT WITHIN DEPARTMENT OF DEFENSE.—In accordance with Directive 5101.1, the Secretary shall ensure that the military departments, the Defense Agencies, and other elements of the Department of Defense provide the executive agent designated under subsection (a) with the appropriate support and resources needed to perform the roles, responsibilities, and authorities of the executive agent.

(d) DEFINITIONS.—In this section:

(1) The term “Directive 5101.1” means Department of Defense Directive 5101.1, or any successor directive relating to the responsibilities of an executive agent of the Department of Defense.

(2) The term “executive agent” has the meaning given the term “DoD Executive Agent” in Directive 5101.1.

(3) The term “open-source intelligence tools” means tools for the systematic collection, processing, and analysis of publicly available information for known or anticipated intelligence requirements.

(Added Pub. L. 114-92, div. A, title XVI, § 1631(a), Nov. 25, 2015, 129 Stat. 1110.)

**SUBCHAPTER II—INTELLIGENCE
COMMERCIAL ACTIVITIES**

Sec.
431. Authority to engage in commercial activities as security for intelligence collection activities.

Sec.
432. Use, disposition, and auditing of funds.
433. Relationship with other Federal laws.
434. Reservation of defenses and immunities.
435. Limitations.
436. Regulations.
437. Congressional oversight.

AMENDMENTS

1992—Pub. L. 102-484, div. A, title X, § 1052(1), Oct. 23, 1992, 106 Stat. 2499, inserted “Sec.” above item “431”.

1991—Pub. L. 102-88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437, added subchapter heading and analysis of sections.

§ 431. Authority to engage in commercial activities as security for intelligence collection activities

(a) AUTHORITY.—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, 2023.

(b) INTERAGENCY COORDINATION AND SUPPORT.—Any such activity shall—

(1) be coordinated with, and (where appropriate) be supported by, the Director of the Central Intelligence Agency; and

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) DEFINITIONS.—In this subchapter:

(1) The term “commercial activities” means activities that are conducted in a manner consistent with prevailing commercial practices and includes—

(A) the acquisition, use, sale, storage and disposal of goods and services;

(B) entering into employment contracts and leases and other agreements for real and personal property;

(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

(D) acquiring licenses, registrations, permits, and insurance; and

(E) establishing corporations, partnerships, and other legal entities.

(2) The term “intelligence collection activities” means the collection of foreign intelligence and counterintelligence information.

(Added Pub. L. 102-88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437; amended Pub. L. 104-93, title V, § 503, Jan. 6, 1996, 109 Stat. 973; Pub. L. 105-272, title V, § 501, Oct. 20, 1998, 112 Stat. 2404; Pub. L. 106-398, § 1 [[div. A], title X, § 1077], Oct. 30, 2000, 114 Stat. 1654, 1654A-282; Pub. L. 107-314, div. A, title X, § 1053, Dec. 2, 2002, 116 Stat. 2649; Pub. L. 108-375, div. A, title IX, § 921, Oct. 28, 2004, 118 Stat. 2029; Pub. L. 109-364, div. A, title IX, § 931, Oct. 17, 2006, 120 Stat. 2362; Pub. L. 110-181, div. A, title IX, § 931(b)(1), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110-417, [div. A], title IX, § 932(a)(7), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111-84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 111-383, div. A, title IX, § 921, Jan. 7, 2011, 124