

§ 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 Stat. 4330; Pub. L. 113–291, div. A, title XVI, §1623, Dec. 19, 2014, 128 Stat. 3632; Pub. L. 115–91, div. A, title XVI, §1622, Dec. 12, 2017, 131 Stat. 1732.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 substituted “December 31, 2023” for “December 31, 2017”.

2014—Subsec. (a). Pub. L. 113–291 substituted “December 31, 2017” for “December 31, 2015”.

2011—Subsec. (a). Pub. L. 111–383 substituted “December 31, 2015” for “December 31, 2010”.

2009—Subsec. (b)(1). Pub. L. 111–84 repealed Pub. L. 110–417, §932(a)(7). See 2008 Amendment note below.

2008—Subsec. (b)(1). Pub. L. 110–417, §932(a)(7), which directed the amendment of subsec. (b)(1) by substituting “Director of National Intelligence” for “Director of Central Intelligence”, was repealed by Pub. L. 111–84.

Pub. L. 110–181 substituted “Director of the Central Intelligence Agency” for “Director of Central Intelligence”.

2006—Subsec. (a). Pub. L. 109–364 substituted “2010” for “2006”.

2004—Subsec. (a). Pub. L. 108–375 substituted “2006” for “2004”.

2002—Subsec. (a). Pub. L. 107–314 substituted “2004” for “2002”.

2000—Subsec. (a). Pub. L. 106–398 substituted “2002” for “2000”.

1998—Subsec. (a). Pub. L. 105–272 substituted “2000” for “1998”.

1996—Subsec. (a). Pub. L. 104–93 substituted “1998” for “1995”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE

Pub. L. 102–88, title V, §504(b), Aug. 14, 1991, 105 Stat. 440, provided that: “The Secretary of Defense may not authorize any activity under section 431 of title 10, United States Code, as added by subsection (a), until the later of—

“(1) the end of the 90-day period beginning on the date of the enactment of this Act [Aug. 14, 1991]; or

“(2) the effective date of regulations first prescribed under section 436 of such title, as added by subsection (a).”

§ 432. Use, disposition, and auditing of funds

(a) **USE OF FUNDS.**—Funds generated by a commercial activity authorized pursuant to this subchapter may be used to offset necessary and reasonable expenses arising from that activity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the activity concerned in a secure manner. Any funds generated by the activity in excess of those required for that purpose shall be deposited, as often as may be practicable, into the Treasury as miscellaneous receipts.

(b) **AUDITS.**—(1) The Secretary of Defense shall assign an organization within the Department of Defense to have auditing responsibility with respect to activities authorized under this subchapter.

(2) That organization shall audit the use and disposition of funds generated by any commercial activity authorized under this subchapter not less often than annually. The results of all such audits shall be reported to the congressional defense committees and the congressional intelligence committees (as defined in section 437(c) of this title) by not later than December 31 of each year.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 438; amended Pub. L. 113–66, div. A, title IX, §921(a), Dec. 26, 2013, 127 Stat. 827; Pub. L. 115–91, div. A, title XVI, §1623, Dec. 12, 2017, 131 Stat. 1732.)

AMENDMENTS

2017—Subsec. (b)(2). Pub. L. 115–91 struck out “promptly” before “reported” and inserted before period at end “by not later than December 31 of each year”.

2013—Subsec. (b)(2). Pub. L. 113-66 substituted “the congressional defense committees and the congressional intelligence committees (as defined in section 437(c) of this title).” for “the intelligence committees (as defined in section 437(d) of this title).”

§ 433. Relationship with other Federal laws

(a) **IN GENERAL.**—Except as provided by subsection (b), a commercial activity conducted pursuant to this subchapter shall be carried out in accordance with applicable Federal law.

(b) **AUTHORIZATION OF WAIVERS WHEN NECESSARY TO MAINTAIN SECURITY.**—(1) If the Secretary of Defense determines, in connection with a commercial activity authorized pursuant to section 431 of this title, that compliance with certain Federal laws or regulations pertaining to the management and administration of Federal agencies would create an unacceptable risk of compromise of an authorized intelligence activity, the Secretary may, to the extent necessary to prevent such compromise, waive compliance with such laws or regulations.

(2) Any determination and waiver by the Secretary under paragraph (1) shall be made in writing and shall include a specification of the laws and regulations for which compliance by the commercial activity concerned is not required consistent with this section.

(3) The authority of the Secretary under paragraph (1) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, an Assistant Secretary of Defense, or a Secretary of a military department.

(c) **FEDERAL LAWS AND REGULATIONS.**—For purposes of this section, Federal laws and regulations pertaining to the management and administration of Federal agencies are only those Federal laws and regulations pertaining to the following:

- (1) The receipt and use of appropriated and nonappropriated funds.
- (2) The acquisition or management of property or services.
- (3) Information disclosure, retention, and management.
- (4) The employment of personnel.
- (5) Payments for travel and housing.
- (6) The establishment of legal entities or government instrumentalities.
- (7) Foreign trade or financial transaction restrictions that would reveal the commercial activity as an activity of the United States Government.

(Added Pub. L. 102-88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 438.)

§ 434. Reservation of defenses and immunities

The submission to judicial proceedings in a State or other legal jurisdiction, in connection with a commercial activity undertaken pursuant to this subchapter, shall not constitute a waiver of the defenses and immunities of the United States.

(Added Pub. L. 102-88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

§ 435. Limitations

(a) **LAWFUL ACTIVITIES.**—Nothing in this subchapter authorizes the conduct of any intel-

ligence activity that is not otherwise authorized by law or Executive order.

(b) **DOMESTIC ACTIVITIES.**—Personnel conducting commercial activity authorized by this subchapter may only engage in those activities in the United States to the extent necessary to support intelligence activities abroad.

(c) **PROVIDING GOODS AND SERVICES TO THE DEPARTMENT OF DEFENSE.**—Commercial activity may not be undertaken within the United States for the purpose of providing goods and services to the Department of Defense, other than as may be necessary to provide security for the activities subject to this subchapter.

(d) **NOTICE TO UNITED STATES PERSONS.**—(1) In carrying out a commercial activity authorized under this subchapter, the Secretary of Defense may not permit an entity engaged in such activity to employ a United States person in an operational, managerial, or supervisory position, and may not assign or detail a United States person to perform operational, managerial, or supervisory duties for such an entity, unless that person is informed in advance of the intelligence security purpose of that activity.

(2) In this subsection, the term “United States person” means an individual who is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

(Added Pub. L. 102-88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

§ 436. Regulations

The Secretary of Defense shall prescribe regulations to implement the authority provided in this subchapter. Such regulations shall be consistent with this subchapter and shall at a minimum—

- (1) specify all elements of the Department of Defense who are authorized to engage in commercial activities pursuant to this subchapter;
- (2) require the personal approval of the Secretary or Deputy Secretary of Defense for all sensitive activities to be authorized pursuant to this subchapter;
- (3) specify all officials who are authorized to grant waivers of laws or regulations pursuant to section 433(b) of this title, or to approve the establishment or conduct of commercial activities pursuant to this subchapter;
- (4) designate a single office within the Department of Defense to be responsible for the oversight of all activities authorized under this subchapter;
- (5) require that each commercial activity proposed to be authorized under this subchapter be subject to appropriate legal review before the activity is authorized; and
- (6) provide for appropriate internal audit controls and oversight for such activities.

(Added Pub. L. 102-88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 439; amended Pub. L. 113-66, div. A, title IX, § 921(b), Dec. 26, 2013, 127 Stat. 827.)

AMENDMENTS

2013—Par. (4). Pub. L. 113-66 substituted “Department of Defense” for “Defense Intelligence Agency” and “oversight” for “management and supervision”.

§ 437. Congressional oversight

(a) **PROPOSED REGULATIONS.**—Copies of regulations proposed to be prescribed under section 436