

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

of this title (including any proposed revision to such regulations) shall be submitted to congressional defense committees and the congressional intelligence committees not less than 30 days before they take effect.

(b) CURRENT INFORMATION.—The Secretary of Defense shall ensure that congressional defense committees and the congressional intelligence committees are kept fully and currently informed of actions taken pursuant to this subchapter, including any significant anticipated activity to be authorized pursuant to this subchapter.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” has the meaning given the term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(Added Pub. L. 102-88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 440; amended Pub. L. 107-306, title VIII, §811(b)(4)(A), Nov. 27, 2002, 116 Stat. 2423; Pub. L. 108-136, div. A, title X, §1031(a)(7), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 108-375, div. A, title X, §1084(d)(3), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 112-81, div. A, title X, §1061(5), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 113-66, div. A, title IX, §921(c), Dec. 26, 2013, 127 Stat. 827.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 113-66, §921(c)(1), substituted “congressional defense committees and the congressional intelligence committees” for “the intelligence committees”.

Subsec. (b). Pub. L. 113-66, §921(c)(2), substituted “The Secretary” for “Consistent with title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Secretary” and “congressional defense committees and the congressional intelligence committees” for “the intelligence committees”.

Subsec. (c). Pub. L. 113-66, §921(c)(3), added subsec. (c).

2011—Subsec. (c). Pub. L. 112-81 struck out subsec. (c) which related to submission of an annual report on certain authorized commercial activities.

2004—Subsec. (c). Pub. L. 108-375 inserted “(50 U.S.C. 415b)” after “National Security Act of 1947”.

2003—Subsec. (b). Pub. L. 108-136, §1031(a)(7)(A), struck out at end “The Secretary shall promptly notify the appropriate committees of Congress whenever a corporation, partnership, or other legal entity is established pursuant to this subchapter.”

Subsec. (c). Pub. L. 108-136, §1031(a)(7)(B), substituted “report) the following:” for “report)—” in introductory provisions, “A” for “a” in pars. (1) to (3), a period for the semicolon at end of par. (1) and for “; and” at end of par. (2), and added par. (4).

2002—Subsec. (c). Pub. L. 107-306, §811(b)(4)(A)(i), in introductory provisions, substituted “Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))” for “Not later than January 15 of each year, the Secretary shall submit to the appropriate committees of Congress”.

Subsec. (d). Pub. L. 107-306, §811(b)(4)(A)(ii), struck out heading and text of subsec. (d). Text read as follows: “In this section, the term ‘intelligence committees’ means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.”

CHAPTER 22—NATIONAL GEOSPATIAL- INTELLIGENCE AGENCY

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PRIOR PROVISIONS

A prior chapter 22 was renumbered chapter 23 of this title.

AMENDMENTS

2003—Pub. L. 108-136, div. A, title IX, §921(d)(1), Nov. 24, 2003, 117 Stat. 1568, substituted “NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY” FOR “NATIONAL IMAGERY AND MAPPING AGENCY” in chapter heading.

SUBCHAPTER I—MISSIONS AND AUTHORITY

Sec. 441. Establishment. 442. Missions. 443. Imagery intelligence and geospatial information: support for foreign countries, regional organizations, and security alliances. 444. Support from Central Intelligence Agency. [445. Repealed.]

AMENDMENTS

2013—Pub. L. 112-239, div. A, title IX, §921(b)(2), Jan. 2, 2013, 126 Stat. 1878, added item 443 and struck out former item 443 “Imagery intelligence and geospatial information: support for foreign countries”.

1997—Pub. L. 105-107, title V, §503(d)(3), Nov. 20, 1997, 111 Stat. 2263, struck out item 445 “Protection of agency identifications and organizational information”.

§ 441. Establishment

(a) ESTABLISHMENT.—The National Geospatial-Intelligence Agency is a combat support agency of the Department of Defense and has significant national missions.

(b) DIRECTOR.—(1) The Director of the National Geospatial-Intelligence Agency is the head of the agency.

(2) Upon a vacancy in the position of Director, the Secretary of Defense shall recommend to the President an individual for appointment to the position.

(3) If an officer of the armed forces on active duty is appointed to the position of Director, the position shall be treated as having been designated by the President as a position of importance and responsibility for purposes of section 601 of this title and shall carry the grade of lieutenant general, or, in the case of an officer of the Navy, vice admiral.

(c) DIRECTOR OF NATIONAL INTELLIGENCE COLLECTION TASKING AUTHORITY.—Unless otherwise directed by the President, the Director of National Intelligence shall have authority (except as otherwise agreed by the Director and the Secretary of Defense) to—

(1) approve collection requirements levied on national imagery collection assets;

(2) determine priorities for such requirements; and

(3) resolve conflicts in such priorities.

(d) AVAILABILITY AND CONTINUED IMPROVEMENT OF IMAGERY INTELLIGENCE SUPPORT TO ALL-SOURCE ANALYSIS AND PRODUCTION FUNCTION.—The Secretary of Defense, in consultation with the Director of National Intelligence, shall take all necessary steps to ensure the full availabil-