

(c) CONCURRENCE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.—The Secretary of Defense shall seek the concurrence of the Director of National Intelligence to the extent the efforts and activities of the Center involve the entities referred to in subsection (b)(4).

(d) SUPPORT FROM OTHER UNITED STATES GOVERNMENT DEPARTMENTS OR AGENCIES.—The head of any non-Department of Defense department or agency of the United States Government may—

(1) provide to the Secretary of Defense services, including personnel support, to support the operations of the Center; and

(2) transfer funds to the Secretary of Defense to support the operations of the Center.

(e) ACCEPTANCE OF GIFTS AND DONATIONS.—(1) Subject to paragraph (3), the Secretary of Defense may accept from any source specified in paragraph (2) any gift or donation for purposes of defraying the costs or enhancing the operations of the Center.

(2) The sources specified in this paragraph are the following:

(A) The government of a State or a political subdivision of a State.

(B) The government of a foreign country.

(C) A foundation or other charitable organization, including a foundation or charitable organization that is organized or operates under the laws of a foreign country.

(D) Any source in the private sector of the United States or a foreign country.

(3) The Secretary may not accept a gift or donation under this subsection if acceptance of the gift or donation would compromise or appear to compromise—

(A) the ability of the Department of Defense, any employee of the Department, or any member of the armed forces to carry out the responsibility or duty of the Department in a fair and objective manner; or

(B) the integrity of any program of the Department or of any person involved in such a program.

(4) The Secretary shall provide written guidance setting forth the criteria to be used in determining the applicability of paragraph (3) to any proposed gift or donation under this subsection.

(f) CREDITING OF FUNDS TRANSFERRED OR ACCEPTED.—Funds transferred to or accepted by the Secretary of Defense under this section shall be credited to appropriations available to the Department of Defense for the Center, and shall be available for the same purposes, and subject to the same conditions and limitations, as the appropriations with which merged. Any funds so transferred or accepted shall remain available until expended.

(g) DEFINITIONS.—In this section:

(1) The term “captured record” means a document, audio file, video file, or other material captured during combat operations from countries, organizations, or individuals, now or once hostile to the United States.

(2) The term “gift or donation” means any gift or donation of funds, materials (including research materials), real or personal property, or services (including lecture services and faculty services).

(Added Pub. L. 113–66, div. A, title X, §1071(a), Dec. 26, 2013, 127 Stat. 867.)

PRIOR PROVISIONS

A prior section 427, added Pub. L. 109–364, div. A, title IX, §932(a), Oct. 17, 2006, 120 Stat. 2362, related to submission of an annual report on intelligence oversight activities of the Department of Defense, prior to repeal by Pub. L. 112–81, div. A, title X, §1061(4)(A), Dec. 31, 2011, 125 Stat. 1583.

§ 428. Defense industrial security

(a) RESPONSIBILITY FOR DEFENSE INDUSTRIAL SECURITY.—The Secretary of Defense shall be responsible for the protection of classified information disclosed to contractors of the Department of Defense.

(b) CONSISTENCY WITH EXECUTIVE ORDERS AND DIRECTIVES.—The Secretary shall carry out the responsibility assigned under subsection (a) in a manner consistent with Executive Order 12829 (or any successor order to such executive order) and consistent with policies relating to the National Industrial Security Program (or any successor to such program).

(c) PERFORMANCE OF INDUSTRIAL SECURITY FUNCTIONS FOR OTHER AGENCIES.—The Secretary may perform industrial security functions for other agencies of the Federal government upon request or upon designation of the Department of Defense as executive agent for the National Industrial Security Program (or any successor to such program).

(d) REGULATIONS AND POLICY GUIDANCE.—The Secretary shall prescribe, and from time to time revise, such regulations and policy guidance as are necessary to ensure the protection of classified information disclosed to contractors of the Department of Defense.

(e) DEDICATION OF RESOURCES.—The Secretary shall ensure that sufficient resources are provided to staff, train, and support such personnel as are necessary to fully protect classified information disclosed to contractors of the Department of Defense.

(Added Pub. L. 110–417, [div. A], title VIII, §845(a)(1), Oct. 14, 2008, 122 Stat. 4541, §438; renumbered §428, Pub. L. 111–84, div. A, title X, §1073(a)(4), Oct. 28, 2009, 123 Stat. 2472; Pub. L. 111–383, div. A, title X, §1075(b)(11), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 115–91, div. A, title X, §1051(a)(3), Dec. 12, 2017, 131 Stat. 1560.)

REFERENCES IN TEXT

Executive Order 12829, referred to in subsec. (b), is set out as a note under section 3161 of Title 50, War and National Defense.

AMENDMENTS

2017—Subsec. (f). Pub. L. 115–91 struck out subsec. (f) which related to biennial reports on expenditures and activities of the Department of Defense in carrying out the requirements of this section.

2011—Subsec. (f). Pub. L. 111–383 struck out “, United States Code,” after “title 31”.

2009—Pub. L. 111–84 renumbered section 438 of this title as this section.

PILOT PROGRAM FOR DEPARTMENT OF DEFENSE CONTROLLED UNCLASSIFIED INFORMATION IN THE HANDS OF INDUSTRY

Pub. L. 115–232, div. A, title X, §1048, Aug. 13, 2018, 132 Stat. 1961, provided that:

“(a) IN GENERAL.—The Secretary of Defense—

“(1) shall establish and implement a pilot program for oversight of designated Department of Defense controlled unclassified information in the hands of defense contractors with foreign ownership, control, or influence concerns; and

“(2) may designate an entity within the Department to be responsible for the pilot program under paragraph (1).

“(b) PROGRAM REQUIREMENTS.—The pilot program under subsection (a) shall have the following elements:

“(1) The use of a capability to rapidly identify companies subject to foreign ownership, control, or influence that are processing designated controlled unclassified information, including unclassified controlled technical information.

“(2) The use, in consultation with the Chief of Information Officer of the Department, of a capability or means for assessing industry compliance with Department cybersecurity standards.

“(3) A means of demonstrating whether and under what conditions the risk to national security posed by access to Department controlled unclassified information, including unclassified controlled technical information, by a company under foreign ownership, control, or influence company can be mitigated and how such mitigation could be enforced.

“(c) BRIEFING REQUIRED.—By not later than 30 days after the completion of the pilot program under this section, but in no case later than December 1, 2019, the Secretary shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the results of the pilot program and any decisions about whether to implement the pilot program on a Department-wide basis.”

REQUIREMENT FOR ENTITIES WITH FACILITY CLEARANCES THAT ARE NOT UNDER FOREIGN OWNERSHIP CONTROL OR INFLUENCE MITIGATION

Pub. L. 111-383, div. A, title VIII, §845, Jan. 7, 2011, 124 Stat. 4285, provided that:

“(a) REQUIREMENT.—The Secretary of Defense shall develop a plan to ensure that covered entities employ 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 and Security 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.