

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”.

Statutory Notes and Related Subsidiaries

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.)

Editorial Notes

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-