

by authorized category (foreign forces, irregular forces, groups, or individuals).

(D) The total amount obligated for support under this section, including budget details.

(E) The total amount obligated in prior fiscal years under this section and applicable preceding authority.

(F) The intended duration of support provided under this section.

(G) A description of the support or training provided to the recipients of support under this section.

(H) A value assessment of the support provided under this section, including a summary of significant activities undertaken by foreign forces, irregular forces, groups, or individuals to support operations by United States special operations forces to combat terrorism.

(Added Pub. L. 114-328, div. A, title XII, §1203(a)(1), Dec. 23, 2016, 130 Stat. 2474; amended Pub. L. 115-91, div. A, title X, §1031, Dec. 12, 2017, 131 Stat. 1550; Pub. L. 116-92, div. A, title X, §1041, Dec. 20, 2019, 133 Stat. 1585; Pub. L. 116-283, div. A, title X, §§1051, 1081(a)(7), Jan. 1, 2021, 134 Stat. 3847, 3871.)

Editorial Notes

AMENDMENTS

2021—Subsec. (c). Pub. L. 116-283, §1051(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “The authority in this section shall be exercised in accordance with such procedures as the Secretary shall establish for purposes of this section. The Secretary shall notify the congressional defense committees of any material modification of such procedures.”

Subsec. (d)(2)(G) to (I). Pub. L. 116-283, §1051(2), added subpars. (G) to (I).

Subsecs. (e), (f). Pub. L. 116-283, §1051(3), (4), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 116-283, §1051(5), added subsec. (g) and struck out former subsec. (g). Prior to amendment, text read as follows: “This section does not constitute authority to conduct a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).”

Pub. L. 116-283, §1051(3), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 116-283, §1081(a)(7), which directed the substitution of “Low Intensity” for “Low-Intensity” in subsec. (g) as redesignated by section 1051 of Pub. L. 116-283, was executed by making substitution in subsec. (h) as redesignated by section 1051, to reflect the probable intent of Congress.

Pub. L. 116-283, §1051(3), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 116-283, §1051(3), redesignated subsec. (h) as (i).

2019—Subsec. (a). Pub. L. 116-92, §1041(1), inserted “authorized” before “ongoing military operations”.

Subsec. (d)(2)(A). Pub. L. 116-92, §1041(2)(A), inserted “and a description of the authorized ongoing operation” before period at end.

Subsec. (d)(2)(B) to (D). Pub. L. 116-92, §1041(2)(B), (C), added subpars. (B) and (C), redesignated former subpar. (C) as (D), and struck out former subpar. (B) which read as follows: “The type of support provided or to be provided to the recipient of the funds.”

Subsec. (d)(2)(E), (F). Pub. L. 116-92, §1041(2)(D), added subpars. (E) and (F).

2017—Subsecs. (g), (h). Pub. L. 115-91, §1031(a), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h)(1). Pub. L. 115-91, §1031(b)(1), substituted “120 days after the last day of each fiscal year” for “March 1 each year”.

Subsec. (h)(2). Pub. L. 115-91, §1031(b)(2), substituted “six months after the date of the submittal of the report most recently submitted under paragraph (1)” for “September 1 each year” and inserted “under this paragraph” after “in which the report”.

Statutory Notes and Related Subsidiaries

CHIEF OF MISSION CONCURRENCE

Pub. L. 117-81, div. E, title LVII, §5703, Dec. 27, 2021, 135 Stat. 2382, provided that: “In the course of a chief of mission providing concurrence to the exercise of the authority pursuant to section 127e of title 10, United States Code, or section 1202 of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115-91; 131 Stat. 1639]—

“(1) each relevant chief of mission shall inform and consult in a timely manner with relevant individuals at relevant missions or bureaus of the Department of State; and

“(2) the Secretary of State shall take such steps as may be necessary to ensure that such relevant individuals have the security clearances necessary and access to relevant compartmented and special programs to so consult in a timely manner with respect to such concurrence.”

§ 127f. Expenditure of funds for clandestine activities that support operational preparation of the environment

(a) **AUTHORITY.**—Subject to subsections (b) through (d), the Secretary of Defense may expend up to \$15,000,000 in any fiscal year for clandestine activities for any purpose the Secretary determines to be proper for preparation of the environment for operations of a confidential nature. Such a determination is final and conclusive upon the accounting officers of the United States. The Secretary may certify the amount of any such expenditure authorized by the Secretary that the Secretary considers advisable not to specify, and the Secretary’s certificate is sufficient voucher for the expenditure of that amount.

(b) **FUNDS.**—Funds for expenditures under this section in a fiscal year shall be derived from amounts authorized to be appropriated for that fiscal year for operation and maintenance, Defense-wide.

(c) **LIMITATION ON DELEGATION.**—The Secretary of Defense may not delegate the authority under this section with respect to any expenditure in excess of \$250,000.

(d) **EXCLUSION OF INTELLIGENCE ACTIVITIES.**—(1) This section does not constitute authority to conduct, or expend funds for, intelligence, counterintelligence, or intelligence-related activities.

(2) In this subsection, the terms “intelligence” and “counterintelligence” have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(e) **ANNUAL REPORT.**—Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees a report on expenditures made under this section during the fiscal year preceding the year in which the report is submitted. Each report shall include, for each expenditure under this section during the fiscal year covered by such report—

(1) the amount and date of such expenditure;

(2) a detailed description of the purpose for which such expenditure was made;

(3) an explanation why other authorities available to the Department of Defense could not be used for such expenditure; and

(4) any other matters the Secretary considers appropriate.

(f) NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.—Funding used to establish, develop, and maintain non-conventional assisted recovery capabilities under this section may only be obligated and expended with the concurrence of the relevant Chief of Mission or Chiefs of Mission.

(Added Pub. L. 116-283, div. A, title X, §1052(a), Jan. 1, 2021, 134 Stat. 3849; amended Pub. L. 117-81, div. A, title X, §1093(b), Dec. 27, 2021, 135 Stat. 1935.)

Editorial Notes

AMENDMENTS

2021—Subsec. (f). Pub. L. 117-81 added subsec. (f).

§ 128. Control and physical protection of special nuclear material; limitation on dissemination of unclassified information

(a)(1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, the Secretary of Defense, with respect to special nuclear materials, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(A) illegal production of nuclear weapons, or

(B) theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in paragraph (1)—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a signifi-

cant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) illegal production of nuclear weapons, or

(ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(b) Nothing in this section shall be construed to authorize the Secretary to withhold, or to authorize the withholding of, information from the appropriate committees of the Congress.

(c) Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5.

(d) Information that the Secretary prohibits to be disseminated pursuant to subsection (a) that is provided to a State or local government shall remain under the control of the Department of Defense, and a State or local law authorizing or requiring a State or local government to disclose such information shall not apply to such information.

(Added Pub. L. 100-180, div. A, title XI, §1123(a), Dec. 4, 1987, 101 Stat. 1149; amended Pub. L. 101-510, div. A, title XIII, §1311(1), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 108-136, div. A, title X, §1031(a)(4), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 114-328, div. A, title XVI, §1662(a)(1), (2), Dec. 23, 2016, 130 Stat. 2614.)

Editorial Notes

PRIOR PROVISIONS

A prior section 128 was renumbered section 421 of this title.

AMENDMENTS

2016—Pub. L. 114-328, §1662(a)(2), substituted “Control and physical protection” for “Physical protection” in section catchline.

Subsec. (d). Pub. L. 114-328, §1662(a)(1), added subsec. (d).

2003—Subsec. (d). Pub. L. 108-136 struck out subsec. (d) which required the Secretary to prepare an annual report detailing the Secretary’s application during the year of each regulation or order prescribed or issued under this section.

1990—Subsec. (d). Pub. L. 101-510 substituted “on an annual basis” for “on a quarterly basis”.

§ 129. Civilian personnel management

(a) The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the total force management policies and procedures established under section 129a of this title, (2) the workload required to carry out the functions and activities of the department, and (3) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense except in accordance with the requirements of this section and section 129a of this title.