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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 10 section 2315; title 28 section 612; title 38 section 310.

§ 1401. Definitions

In this chapter:

(1) Director

The term “Director” means the Director of the Office of Management and Budget.

(2) Executive agency

The term “executive agency” has the meaning given that term in section 403(1) of title 41.

(3) Information technology

(A) The term “information technology”, with respect to an executive agency means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

(B) The term “information technology” includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(C) Notwithstanding subparagraphs (A) and (B), the term “information technology” does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.

(4) Information resources

The term “information resources” has the meaning given such term in section 3502(6) of title 44.

(5) Information resources management

The term “information resources management” has the meaning given such term in section 3502(7) of title 44.

(6) Information system

The term “information system” has the meaning given such term in section 3502(8) of title 44.

(7) Commercial item

The term “commercial item” has the meaning given that term in section 403(12) of title 41.

(Pub. L. 104-106, div. E, §5002, Feb. 10, 1996, 110 Stat. 679.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this division” meaning division E (§§5001-5703) of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 679, which is classified principally to this chapter. For complete classification of division E to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Section 5701 of title LVII of div. E of Pub. L. 104-106 provided that: “This division [div. E (§§5001-5703) of Pub. L. 104-106, see Short Title note below] and the amendments made by this division shall take effect 180 days after the date of the enactment of this Act [Feb. 10, 1996].”

SHORT TITLE

Section 5001 of div. E of Pub. L. 104-106, as amended by Pub. L. 104-208, div. A, title I, §101(f) [title VIII, §808(b)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-394, provided that: “This division [div. E (§§5001-5703) of Pub. L. 104-106, see Tables for classification] and division D

[[§ 4001-4402 of Pub. L. 104-106, see Tables for classification] may be cited as the ‘Clinger-Cohen Act of 1996.’”

SAVINGS PROVISION

Section 5702 of title LVII of div. E of Pub. L. 104-106 provided that:

“(a) REGULATIONS, INSTRUMENTS, RIGHTS, AND PRIVILEGES.—All rules, regulations, contracts, orders, determinations, permits, certificates, licenses, grants, and privileges—

“(1) which have been issued, made, granted, or allowed to become effective by the Administrator of General Services or the General Services Board of Contract Appeals, or by a court of competent jurisdiction, in connection with an acquisition activity carried out under section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759), and

“(2) which are in effect on the effective date of this division [see Effective Date note above], shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Director or any other authorized official, by a court of competent jurisdiction, or by operation of law.

“(b) PROCEEDINGS.—

“(1) PROCEEDINGS GENERALLY.—This division [see Short Title note above] and the amendments made by this division shall not affect any proceeding, including any proceeding involving a claim, application, or protest in connection with an acquisition activity carried out under section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759) that is pending before the Administrator of General Services or the General Services Board of Contract Appeals on the effective date of this division.

“(2) ORDERS.—Orders may be issued in any such proceeding, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if this division had not been enacted. An order issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked in accordance with law by the Director or any other authorized official, by a court of competent jurisdiction, or by operation of law.

“(3) DISCONTINUANCE OR MODIFICATION OF PROCEEDINGS NOT PROHIBITED.—Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act [see Tables for classification] had not been enacted.

“(4) OTHER AUTHORITY AND PROHIBITION.—Section 1558(a) of title 31, United States Code, and the second sentence of section 3552 of such title shall continue to apply with respect to a protest process in accordance with this subsection.

“(5) REGULATIONS FOR TRANSFER OF PROCEEDINGS.—The Director may prescribe regulations providing for the orderly transfer of proceedings continued under paragraph (1).

“(c) STANDARDS AND GUIDELINES FOR FEDERAL COMPUTER SYSTEMS.—Standards and guidelines that are in effect for Federal computer systems under section 111(d) of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759(d)) on the day before the effective date of this division shall remain in effect until modified, terminated, superseded, revoked, or disapproved under the authority of section 5131 of this Act [40 U.S.C. 1441].”

RULES OF CONSTRUCTION

Section 5703 of title LVII of div. E of Pub. L. 104-106 provided that:

“(a) RELATIONSHIP TO TITLE 44, UNITED STATES CODE.—Nothing in this division [see Short Title note above] shall be construed to amend, modify, or supersede any provision of title 44, United States Code, other than chapter 35 of such title.

“(b) RELATIONSHIP TO COMPUTER SECURITY ACT OF 1987.—Nothing in this division shall affect the limitations on authority that is provided for in the administration of the Computer Security Act of 1987 (Public Law 100-235) [enacting sections 278g-3 and 278g-4 of Title 15, Commerce and Trade, amending section 759 of this title and section 272 of Title 15, and enacting provisions set out as notes under section 1441 of this title and section 271 of Title 15] and the amendments made by such Act.”

EX. ORD. NO. 13011. FEDERAL INFORMATION TECHNOLOGY

Ex. Ord. No. 13011, July 16, 1996, 61 F.R. 37657, provided:

A Government that works better and costs less requires efficient and effective information systems. The Paperwork Reduction Act of 1995 [44 U.S.C. 3501 et seq.] and the Information Technology Management Reform Act of 1996 [now Clinger-Cohen Act of 1996, see Short Title note above] provide the opportunity to improve significantly the way the Federal Government acquires and manages information technology. Agencies now have the clear authority and responsibility to make measurable improvements in mission performance and service delivery to the public through the strategic application of information technology. A coordinated approach that builds on existing structures and successful practices is needed to provide maximum benefit across the Federal Government from this technology.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* It shall be the policy of the United States Government that executive agencies shall: (a) significantly improve the management of their information systems, including the acquisition of information technology, by implementing the relevant provisions of the Paperwork Reduction Act of 1995 (Public Law 104-13) [44 U.S.C. 3501 et seq.], the Information Technology Management Reform Act of 1996 (Division E of Public Law 104-106) (“Information Technology Act”) [now Clinger-Cohen Act of 1996, see Short Title note above], and the Government Performance and Results Act of 1993 (Public Law 103-62) [see Short Title of 1993 Amendment note set out under section 1101 of Title 31, Money and Finance];

(b) refocus information technology management to support directly their strategic missions, implement an investment review process that drives budget formulation and execution for information systems, and rethink and restructure the way they perform their functions before investing in information technology to support that work;

(c) establish clear accountability for information resources management activities by creating agency Chief Information Officers (CIOs) with the visibility and management responsibilities necessary to advise the agency head on the design, development, and implementation of those information systems. These responsibilities include: (1) participating in the investment review process for information systems; (2) monitoring and evaluating the performance of those information systems on the basis of applicable performance measures; and, (3) as necessary, advising the agency head to modify or terminate those systems;

(d) cooperate in the use of information technology to improve the productivity of Federal programs and to promote a coordinated, interoperable, secure, and shared Governmentwide infrastructure that is provided and supported by a diversity of private sector suppliers and a well-trained corps of information technology professionals; and

(e) establish an interagency support structure that builds on existing successful interagency efforts and shall provide expertise and advice to agencies; expand the skill and career development opportunities of information technology professionals; improve the management and use of information technology within and among agencies by developing information technology procedures and standards and by identifying and shar-

ing experiences, ideas, and promising practices; and provide innovative, multi-disciplinary, project-specific support to agencies to enhance interoperability, minimize unnecessary duplication of effort, and capitalize on agency successes.

SEC. 2. Responsibilities of Agency Heads. The head of each executive agency shall: (a) effectively use information technology to improve mission performance and service to the public;

(b) strengthen the quality of decisions about the employment of information resources to meet mission needs through integrated analysis, planning, budgeting, and evaluation processes, including:

(1) determining, before making investments in new information systems, whether the Government should be performing the function, if the private sector or another agency should support the function, and if the function needs to be or has been appropriately redesigned to improve its efficiency;

(2) establishing mission-based performance measures for information systems investments, aligned with agency performance plans prepared pursuant to the Government Performance and Results Act of 1993 (Public Law 103-62);

(3) establishing agency-wide and project-level management structures and processes responsible and accountable for managing, selecting, controlling, and evaluating investments in information systems, with authority for terminating information systems when appropriate;

(4) supporting appropriate training of personnel; and

(5) seeking the advice of, participating in, and supporting the interagency support structure set forth in this order;

(c) select CIOs with the experience and skills necessary to accomplish the duties set out in law and policy, including this order, and involve the CIO at the highest level of the agency in the processes and decisions set out in this section;

(d) ensure that the information security policies, procedures, and practices of the executive agency are adequate;

(e) where appropriate, and in accordance with the Federal Acquisition Regulation and guidance to be issued by the Office of Management and Budget (OMB), structure major information systems investments into manageable projects as narrow in scope and brief in duration as practicable, consistent with the Information Technology Act, to reduce risk, promote flexibility and interoperability, increase accountability, and better correlate mission need with current technology and market conditions; and

(f) to the extent permitted by law, enter into a contract that provides for multiagency acquisitions of information technology as an executive agent for the Government, if and in the manner that the Director of OMB considers it advantageous to do so.

SEC. 3. Chief Information Officers Council. (a) *Purpose and Functions.* A Chief Information Officers Council ("CIO Council") is established as the principal interagency forum to improve agency practices on such matters as the design, modernization, use, sharing, and performance of agency information resources. The Council shall:

(1) develop recommendations for overall Federal information technology management policy, procedures, and standards;

(2) share experiences, ideas, and promising practices, including work process redesign and the development of performance measures, to improve the management of information resources;

(3) identify opportunities, make recommendations for, and sponsor cooperation in using information resources;

(4) assess and address the hiring, training, classification, and professional development needs of the Federal Government with respect to information resources management;

(5) make recommendations and provide advice to appropriate executive agencies and organizations, includ-

ing advice to OMB on the Governmentwide strategic plan required by the Paperwork Reduction Act of 1995; and

(6) seek the views of the Chief Financial Officers Council, Government Information Technology Services Board, Information Technology Resources Board, Federal Procurement Council, industry, academia, and State and local governments on matters of concern to the Council as appropriate.

(b) *Membership.* The CIO Council shall be composed of the CIOs and Deputy CIOs of the following executive agencies plus two representatives from other agencies:

1. Department of State;
2. Department of the Treasury;
3. Department of Defense;
4. Department of Justice;
5. Department of the Interior;
6. Department of Agriculture;
7. Department of Commerce;
8. Department of Labor;
9. Department of Health and Human Services;
10. Department of Housing and Urban Development;
11. Department of Transportation;
12. Department of Energy;
13. Department of Education;
14. Department of Veterans Affairs;
15. Environmental Protection Agency;
16. Federal Emergency Management Agency;
17. Central Intelligence Agency;
18. Small Business Administration;
19. Social Security Administration;
20. Department of the Army;
21. Department of the Navy;
22. Department of the Air Force;
23. National Aeronautics and Space Administration;
24. Agency for International Development;
25. General Services Administration;
26. National Science Foundation;
27. Nuclear Regulatory Commission; and
28. Office of Personnel Management.

The Administrator of the Office of Information and Regulatory Affairs of OMB, the Controller of the Office of Federal Financial Management of OMB, the Administrator of the Office of Federal Procurement Policy of OMB, a Senior Representative of the Office of Science and Technology Policy, the Chair of the Government Information Technology Services Board, and the Chair of the Information Technology Resources Board shall also be members. The CIO Council shall be chaired by the Deputy Director for Management of OMB. The Vice Chair, elected by the CIO Council on a rotating basis, shall be an agency CIO.

SEC. 4. Government Information Technology Services Board.

(a) *Purpose and Functions.* A Government Information Technology Services Board ("Services Board") is established to ensure continued implementation of the information technology recommendations of the National Performance Review and to identify and promote the development of innovative technologies, standards, and practices among agencies and State and local governments and the private sector. It shall seek the views of experts from industry, academia, and State and local governments on matters of concern to the Services Board as appropriate. The Services Board shall also make recommendations to the agencies, the CIO Council, OMB, and others as appropriate, and assist in the following:

(1) creating opportunities for cross-agency cooperation and intergovernmental approaches in using information resources to support common operational areas and to develop and provide shared governmentwide infrastructure services;

(2) developing shared governmentwide information infrastructure services to be used for innovative, multi-agency information technology projects;

(3) creating and utilizing affinity groups for particular business or technology areas; and

(4) developing with the National Institute of Standards and Technology and with established standards

bodies, standards and guidelines pertaining to Federal information systems, consistent with the limitations contained in the Computer Security Act of 1987 (40 U.S.C. 759 note), as amended by the Information Technology Act.

(b) *Membership.* The Services Board shall be composed of individuals from agencies based on their proven expertise or accomplishments in fields necessary to achieve its goals. Major government mission areas such as electronic benefits, electronic commerce, law enforcement, environmental protection, national defense, and health care may be represented on the Services Board to provide a program operations perspective. Initial selection of members will be made by OMB in consultation with other agencies as appropriate. The CIO Council may nominate two members. The Services Board shall recommend new members to OMB for consideration. The Chair will be elected by the Services Board.

SEC. 5. *Information Technology Resources Board.*

(a) *Purpose and Functions.* An Information Technology Resources Board (“Resources Board”) is established to provide independent assessments to assist in the development, acquisition, and management of selected major information systems and to provide recommendations to agency heads and OMB as appropriate. The Resources Board shall:

- (1) review, at the request of an agency and OMB, specific information systems proposed or under development and make recommendations to the agency and OMB regarding the status of systems or next steps;
- (2) publicize lessons learned and promising practices based on information systems reviewed by the Board; and
- (3) seek the views of experts from industry, academia, and State and local governments on matters of concern to the Resources Board, as appropriate.

(b) *Membership.* The Resources Board shall be composed of individuals from executive branch agencies based on their knowledge of information technology, program, or acquisition management within Federal agencies. Selection of members shall be made by OMB in consultation with other agencies as appropriate. The Chair will be elected by the Resources Board. The Resources Board may call upon the department or agency whose project is being reviewed, or any other department or agency to provide knowledgeable representative(s) to the Board whose guidance and expertise will assist in focusing on the primary issue(s) presented by a specific system.

SEC. 6. *Office of Management and Budget.* The Director of OMB shall:

- (1) evaluate agency information resources management practices and, as part of the budget process, analyze, track and evaluate the risks and results of all major capital investments for information systems;
- (2) notify an agency if it believes that a major information system requires outside assistance;
- (3) provide guidance on the implementation of this order and on the management of information resources to the executive agencies and to the Boards established by this order; and
- (4) evaluate the effectiveness of the management structure set out in this order after 3 years and make recommendations for any appropriate changes.

SEC. 7. *General Services Administration.* Under the direction of OMB, the Administrator of General Services shall:

- (1) continue to manage the FTS2000 program and coordinate the follow-on to that program, on behalf of and with the advice of customer agencies;
- (2) develop, maintain, and disseminate for the use of the Federal community, as requested by OMB or the agencies, recommended methods and strategies for the development and acquisition of information technology;
- (3) conduct and manage outreach programs in cooperation with agency managers;
- (4) be a focal point for liaison on information resources management, including Federal information

technology, with State and local governments, and with nongovernmental international organizations subject to prior consultation with the Secretary of State to ensure such liaison would be consistent with and support overall United States foreign policy objectives;

(5) support the activities of the Secretary of State for liaison, consultation, and negotiation with intergovernmental organizations in information resources management matters;

(6) assist OMB, as requested, in evaluating agencies’ performance-based management tracking systems and agencies’ achievement of cost, schedule, and performance goals; and

(7) provide support and assistance to the interagency groups established in this order.

SEC. 8. *Department of Commerce.* The Secretary of Commerce shall carry out the standards responsibilities under the Computer Security Act of 1987 [40 U.S.C. 1441 note], as amended by the Information Technology Act, taking into consideration the recommendations of the agencies, the CIO Council, and the Services Board.

SEC. 9. *Department of State.* (a) The Secretary of State shall be responsible for liaison, consultation, and negotiation with foreign governments and intergovernmental organizations on all matters related to information resources management, including Federal information technology. The Secretary shall further ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international standards and recommendations affecting information technology. In the exercise of these responsibilities, the Secretary shall consult, as appropriate, with affected domestic agencies, organizations, and other members of the public.

(b) The Secretary of State shall advise the Director on the development of United States positions and policies on international information policy and technology issues affecting Federal Government activities and the development of international information technology standards.

SEC. 10. *Definitions.* (a) “Executive agency” has the meaning given to that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(b) “Information Technology” has the meaning given that term in section 5002 of the Information Technology Act [40 U.S.C. 1401].

(c) “Information resources” has the meaning given that term in section 3502(6) of title 44, United States Code.

(d) “Information resources management” has the meaning given that term in section 3502(7) of title 44, United States Code.

(e) “Information system” has the meaning given that term in section 3502(8) of title 44, United States Code.

(f) “Affinity group” means any interagency group focused on a business or technology area with common information technology or customer requirements. The functions of an affinity group can include identifying common program goals and requirements; identifying opportunities for sharing information to improve quality and effectiveness; reducing costs and burden on the public; and recommending protocols and other standards, including security standards, to the National Institute of Standards and Technology for Government-wide applicability, for action in accordance with the Computer Security Act of 1987 [40 U.S.C. 1441 note], as amended by the Information Technology Act.

(g) “National security system” means any telecommunications or information system operated by the United States Government, the function, operation, or use of which (1) involves intelligence activities; (2) involves cryptologic activities related to national security; (3) involves command and control of military forces; (4) involves equipment that is an integral part of a weapon or weapons system; or (5) is critical to the direct fulfillment of military or intelligence missions, but excluding any system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

SEC. 11. *Applicability to National Security Systems.*

The heads of executive agencies shall apply the policies and procedures established in this order to national security systems in a manner consistent with the applicability and related limitations regarding such systems set out in the Information Technology Act.

SEC. 12. *Judicial Review.* Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

SUBCHAPTER I—RESPONSIBILITY FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

PART A—DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

§ 1411. **Responsibility of Director**

In fulfilling the responsibility to administer the functions assigned under chapter 35 of title 44, the Director shall comply with this subchapter with respect to the specific matters covered by this subchapter.

(Pub. L. 104–106, div. E, title LI, § 5111, Feb. 10, 1996, 110 Stat. 680.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title” meaning title LI (§§ 5101–5142) of div. E of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 680, which enacted this subchapter, amended section 5315 of Title 5, Government Organization and Employees, and sections 3504, 3506, and 3518 of Title 44, Public Printing and Documents, and repealed section 759 of this title. For complete classification of title LI to the Code, see Tables.

EFFECTIVE DATE

Subchapter effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, set out as a note under section 1401 of this title.

REVIEW AND ANALYSIS OF OUTSOURCING AND PRIVATIZATION

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 640], Sept. 30, 1996, 110 Stat. 3009–314, 3009–365, as amended by Pub. L. 104–208, div. A, title I, § 101(f) [title VIII, § 808(c)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–394, provided that: “In reviewing and analyzing the contracting out, outsourcing or privatization of business and administrative functions, and in implementing 40 U.S.C. sections 1413 and 1423, and other provisions, in title LI of the National Defense Authorization Act for fiscal year 1996 (the Clinger-Cohen Act of 1996) [40 U.S.C. 1411 et seq.]—

“(1) the Director of the Office of Management and Budget and the heads of the executive agencies may have studies, analyses, reviews and other management assistance performed by the private sector;

“(2) the reviews, analyses, and studies called for by 40 U.S.C. section 1413(b)(2)(B) and (C) shall be completed and reported to the Agency Head within 180 days, or less measured from when a study analysis or review is initiated unless the Agency Head determines additional time is needed;

“(3) in accordance with principles and rules governing organizational conflicts of interest, persons involved in a particular study may not compete for any work that is to be or is outsourced as a result of that study; and

“(4) this section will apply with respect to studies occurring on or after the date of enactment of this subsection [Sept. 30, 1996] and completed before September 1, 1999 and the Comptroller General of the United States shall review and provide an assessment of this program by January 1, 1999.”

§ 1412. **Capital planning and investment control**

(a) **Federal information technology**

The Director shall perform the responsibilities set forth in this section in fulfilling the responsibilities under section 3504(h) of title 44.

(b) **Use of information technology in Federal programs**

The Director shall promote and be responsible for improving the acquisition, use, and disposal of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(c) **Use of budget process**

The Director shall develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments made by an executive agency for information systems. The process shall cover the life of each system and shall include explicit criteria for analyzing the projected and actual costs, benefits, and risks associated with the investments. At the same time that the President submits the budget for a fiscal year to Congress under section 1105(a) of title 31, the Director shall submit to Congress a report on the net program performance benefits achieved as a result of major capital investments made by executive agencies in information systems and how the benefits relate to the accomplishment of the goals of the executive agencies.

(d) **Information technology standards**

The Director shall oversee the development and implementation of standards and guidelines pertaining to Federal computer systems by the Secretary of Commerce through the National Institute of Standards and Technology under section 1441 of this title and section 278g–3 of title 15.

(e) **Designation of executive agents for acquisitions**

The Director shall designate (as the Director considers appropriate) one or more heads of executive agencies as executive agent for Government-wide acquisitions of information technology.

(f) **Use of best practices in acquisitions**

The Director shall encourage the heads of the executive agencies to develop and use the best practices in the acquisition of information technology.

(g) **Assessment of other models for managing information technology**

The Director shall assess, on a continuing basis, the experiences of executive agencies, State and local governments, international organizations, and the private sector in managing information technology.