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§ 2301. Findings

Congress makes the following findings:

(1) Weapons of mass destruction and related materials and technologies are increasingly available from worldwide sources. Technical information relating to such weapons is readily available on the Internet, and raw materials for chemical, biological, and radiological weapons are widely available for legitimate commercial purposes.

(2) The former Soviet Union produced and maintained a vast array of nuclear, biological, and chemical weapons of mass destruction.

(3) Many of the states of the former Soviet Union retain the facilities, materials, and technologies capable of producing additional quantities of weapons of mass destruction.

(4) The disintegration of the former Soviet Union was accompanied by disruptions of command and control systems, deficiencies in accountability for weapons, weapons-related materials and technologies, economic hardships, and significant gaps in border control among the states of the former Soviet Union. The problems of organized crime and corruption in the states of the former Soviet Union increase the potential for proliferation of nuclear, radiological, biological, and chemical weapons and related materials.

(5) The conditions described in paragraph (4) have substantially increased the ability of potentially hostile nations, terrorist groups, and individuals to acquire weapons of mass destruction and related materials and technologies from within the states of the former Soviet Union and from unemployed scientists who worked on those programs.

(6) As a result of such conditions, the capability of potentially hostile nations and terrorist groups to acquire nuclear, radiological, biological, and chemical weapons is greater than at any time in history.

(7) The President has identified North Korea, Iraq, Iran, and Libya as hostile states which already possess some weapons of mass destruction and are developing others.

(8) The acquisition or the development and use of weapons of mass destruction is well within the capability of many extremist and terrorist movements, acting independently or as proxies for foreign states.

(9) Foreign states can transfer weapons to or otherwise aid extremist and terrorist movements indirectly and with plausible deniability.

(10) Terrorist groups have already conducted chemical attacks against civilian targets in the United States and Japan, and a radiological attack in Russia.

(11) The potential for the national security of the United States to be threatened by nuclear, radiological, chemical, or biological terrorism must be taken seriously.

(12) There is a significant and growing threat of attack by weapons of mass destruction on targets that are not military targets in the usual sense of the term.

(13) Concomitantly, the threat posed to the citizens of the United States by nuclear, radiological, biological, and chemical weapons delivered by unconventional means is significant and growing.

(14) Mass terror may result from terrorist incidents involving nuclear, radiological, biological, or chemical materials.

(15) Facilities required for production of radiological, biological, and chemical weapons are much smaller and harder to detect than nuclear weapons facilities, and biological and chemical weapons can be deployed by alternative delivery means other than long-range ballistic missiles.

(16) Covert or unconventional means of delivery of nuclear, radiological, biological, and chemical weapons include cargo ships, passenger aircraft, commercial and private vehicles and vessels, and commercial cargo shipments routed through multiple destinations.

(17) Traditional arms control efforts assume large state efforts with detectable manufacturing programs and weapons production programs, but are ineffective in monitoring and controlling smaller, though potentially more dangerous, unconventional proliferation efforts.

(18) Conventional counterproliferation efforts would do little to detect or prevent the rapid development of a capability to suddenly manufacture several hundred chemical or biological weapons with nothing but commercial supplies and equipment.

(19) The United States lacks adequate planning and countermeasures to address the threat of nuclear, radiological, biological, and chemical terrorism.

(20) The Department of Energy has established a Nuclear Emergency Response Team which is available in case of nuclear or radio-

logical emergencies, but no comparable units exist to deal with emergencies involving biological or chemical weapons or related materials.

(21) State and local emergency response personnel are not adequately prepared or trained for incidents involving nuclear, radiological, biological, or chemical materials.

(22) Exercises of the Federal, State, and local response to nuclear, radiological, biological, or chemical terrorism have revealed serious deficiencies in preparedness and severe problems of coordination.

(23) The development of, and allocation of responsibilities for, effective countermeasures to nuclear, radiological, biological, or chemical terrorism in the United States requires well-coordinated participation of many Federal agencies, and careful planning by the Federal Government and State and local governments.

(24) Training and exercises can significantly improve the preparedness of State and local emergency response personnel for emergencies involving nuclear, radiological, biological, or chemical weapons or related materials.

(25) Sharing of the expertise and capabilities of the Department of Defense, which traditionally has provided assistance to Federal, State, and local officials in neutralizing, dismantling, and disposing of explosive ordnance, as well as radiological, biological, and chemical materials, can be a vital contribution to the development and deployment of countermeasures against nuclear, biological, and chemical weapons of mass destruction.

(26) The United States lacks effective policy coordination regarding the threat posed by the proliferation of weapons of mass destruction.

(Pub. L. 104-201, div. A, title XIV, § 1402, Sept. 23, 1996, 110 Stat. 2715.)

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-293, title VII, § 701, Oct. 11, 1996, 110 Stat. 3470, provided that: "This title [enacting section 2366 of this title and provisions set out as a note under section 2351 of this title] may be cited as the 'Combatting Proliferation of Weapons of Mass Destruction Act of 1996'."

SHORT TITLE

Section 1401 of title XIV of div. A of Pub. L. 104-201 provided that: "This title [enacting this chapter, section 382 of Title 10, Armed Forces, and sections 175a and 2332d of Title 18, Crimes and Criminal Procedure, amending section 1705 of this title, section 372 of Title 10, and provisions set out as a note under section 5955 of Title 22, Foreign Relations and Intercourse] may be cited as the 'Defense Against Weapons of Mass Destruction Act of 1996'."

COMMISSION TO ASSESS THE THREAT TO THE UNITED STATES FROM ELECTROMAGNETIC PULSE (EMP) ATTACK

Pub. L. 106-398, § 1 [[div. A], title XIV], Oct. 30, 2000, 114 Stat. 1654, 1654A-345, provided that:

"SEC. 1401. ESTABLISHMENT OF COMMISSION.

"(a) ESTABLISHMENT.—There is hereby established a commission to be known as the 'Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack' (hereafter in this title referred to as the 'Commission').

"(b) COMPOSITION.—The Commission shall be composed of nine members. Seven of the members shall be appointed by the Secretary of Defense and two of the

members shall be appointed by the Director of the Federal Emergency Management Agency. In selecting individuals for appointment to the Commission, the Secretary of Defense shall consult with the chairmen and ranking minority members of the Committees on Armed Services of the Senate and House of Representatives.

"(c) QUALIFICATIONS.—Members of the Commission shall be appointed from among private United States citizens with knowledge and expertise in the scientific, technical, and military aspects of electromagnetic pulse (hereafter in this title referred to as 'EMP') effects resulting from the detonation of a nuclear weapon or weapons at high altitude, sometimes referred to as high-altitude electromagnetic pulse effects (HEMP).

"(d) CHAIRMAN OF COMMISSION.—The Secretary of Defense shall designate one of the members of the Commission to serve as chairman of the Commission.

"(e) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall be filled in the same manner as the original appointment.

"(f) SECURITY CLEARANCES.—All members of the Commission shall hold appropriate security clearances.

"(g) INITIAL ORGANIZATION REQUIREMENTS.—All appointments to the Commission shall be made not later than 90 days after the date of the enactment of this Act [Oct. 30, 2000]. The Commission shall convene its first meeting not later than 60 days after the date as of which all members of the Commission have been appointed.

"SEC. 1402. DUTIES OF COMMISSION.

"(a) REVIEW OF EMP THREAT.—The Commission shall assess—

"(1) the nature and magnitude of potential high-altitude EMP threats to the United States from all potentially hostile states or non-state actors that have or could acquire nuclear weapons and ballistic missiles enabling them to perform a high-altitude EMP attack against the United States within the next 15 years;

"(2) the vulnerability of United States military and especially civilian systems to an EMP attack, giving special attention to vulnerability of the civilian infrastructure as a matter of emergency preparedness;

"(3) the capability of the United States to repair and recover from damage inflicted on United States military and civilian systems by an EMP attack; and

"(4) the feasibility and cost of hardening select military and civilian systems against EMP attack.

"(b) RECOMMENDATION.—The Commission shall recommend any steps it believes should be taken by the United States to better protect its military and civilian systems from EMP attack.

"(c) COOPERATION FROM GOVERNMENT OFFICIALS.—In carrying out its duties, the Commission should receive the full and timely cooperation of the Secretary of Defense, the Director of the Federal Emergency Management Agency, and any other United States Government official serving in the Department of Defense or Armed Forces in providing the Commission with analyses, briefings, and other information necessary for the fulfillment of its responsibilities.

"SEC. 1403. REPORTS.

"(a) COMMISSION REPORT.—The Commission shall, not later than one year after the date of its first meeting, submit to Congress, the Secretary of Defense, and the Director of the Federal Emergency Management Agency a report on the Commission's findings and conclusions.

"(b) SECRETARY OF DEFENSE REPORT.—Not later than one year after the date of the Commission's report under subsection (a), the Secretary of Defense shall submit to Congress a report—

"(1) commenting on the Commission's findings and conclusions;

"(2) describing political-military scenarios that could possibly lead to an EMP attack against the United States;

“(3) evaluating the relative likelihood of an EMP attack against the United States compared to other threats involving nuclear weapons; and

“(4) explaining what actions, if any, the Secretary intends to take to implement the recommendations of the Commission and the Secretary’s reasons for doing so.

“SEC. 1404. POWERS.

“(a) HEARINGS.—The Commission or, at its direction, any panel or member of the Commission, may, for the purpose of carrying out the provisions of this title, hold hearings, take testimony, receive evidence, and administer oaths to the extent that the Commission or any panel or member considers advisable.

“(b) INFORMATION.—The Commission may secure directly from the Department of Defense, the Central Intelligence Agency, and any other Federal department or agency information that the Commission considers necessary to enable the Commission to carry out its responsibilities under this title.

“SEC. 1405. COMMISSION PROCEDURES.

“(a) MEETINGS.—The Commission shall meet at the call of the Chairman.

“(b) QUORUM.—(1) Five members of the Commission shall constitute a quorum other than for the purpose of holding hearings.

“(2) The Commission shall act by resolution agreed to by a majority of the members of the Commission.

“(c) COMMISSION.—The Commission may establish panels composed of less than full membership of the Commission for the purpose of carrying out the Commission’s duties. The actions of each such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

“(d) AUTHORITY OF INDIVIDUALS TO ACT FOR COMMISSION.—Any agent or member of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this title.

“SEC. 1406. PERSONNEL MATTERS.

“(a) PAY OF MEMBERS.—Members of the Commission shall serve without pay by reason of their work on the Commission.

“(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

“(c) STAFF.—(1) The chairman of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties. The appointment of a staff director shall be subject to the approval of the Commission.

“(2) The chairman of the Commission may fix the pay of the staff director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay fixed under this paragraph for the staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title and the rate of pay for other personnel may not exceed the maximum rate payable for grade GS-15 of the General Schedule.

“(d) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the chairman of the Commission, the head of any Federal department or agency may detail, on a nonreimbursable basis, any personnel of that department or agency to the Commission to assist it in carrying out its duties.

“(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairman of the Commission may pro-

cure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

“SEC. 1407. MISCELLANEOUS ADMINISTRATIVE PROVISIONS.

“(a) POSTAL AND PRINTING SERVICES.—The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

“(b) MISCELLANEOUS ADMINISTRATIVE AND SUPPORT SERVICES.—The Secretary of Defense shall furnish the Commission, on a reimbursable basis, any administrative and support services requested by the Commission.

“SEC. 1408. FUNDING.

“Funds for activities of the Commission shall be provided from amounts appropriated for the Department of Defense for operation and maintenance for Defense-wide activities for fiscal year 2001. Upon receipt of a written certification from the Chairman of the Commission specifying the funds required for the activities of the Commission, the Secretary of Defense shall promptly disburse to the Commission, from such amounts, the funds required by the Commission as stated in such certification.

“SEC. 1409. TERMINATION OF THE COMMISSION.

“The Commission shall terminate 60 days after the date of the submission of its report under section 1403(a).”

DOMESTIC PREPAREDNESS FOR DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION

Pub. L. 105-261, div. A, title XIV, Oct. 17, 1998, 112 Stat. 2167, as amended by Pub. L. 106-65, div. A, title X, §1064, Oct. 5, 1999, 113 Stat. 769, Pub. L. 106-398, §1 [(div. A), title X, §1087(d)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293; Pub. L. 107-107, div. A, title XV, §1514(a), (b)(1), Dec. 28, 2001, 115 Stat. 1273, provided that:

“SEC. 1401. SHORT TITLE.

“This title may be cited as the ‘Defense Against Weapons of Mass Destruction Act of 1998’.

“SEC. 1402. DOMESTIC PREPAREDNESS FOR RESPONSE TO THREATS OF TERRORIST USE OF WEAPONS OF MASS DESTRUCTION.

“(a) ENHANCED RESPONSE CAPABILITY.—In light of the continuing potential for terrorist use of weapons of mass destruction against the United States and the need to develop a more fully coordinated response to that threat on the part of Federal, State, and local agencies, the President shall act to increase the effectiveness at the Federal, State, and local level of the domestic emergency preparedness program for response to terrorist incidents involving weapons of mass destruction by utilizing the President’s existing authorities to develop an integrated program that builds upon the program established under the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104-201; 110 Stat. 2714; 50 U.S.C. 2301 et seq.).

“(b) REPORT.—Not later than January 31, 1999, the President shall submit to Congress a report containing information on the actions taken at the Federal, State, and local level to develop an integrated program to prevent and respond to terrorist incidents involving weapons of mass destruction.

“SEC. 1403. REPORT ON DOMESTIC EMERGENCY PREPAREDNESS.

“[Amended section 1051 of Pub. L. 105-85, set out as a note under section 1113 of Title 31, Money and Finance.]

“SEC. 1404. THREAT AND RISK ASSESSMENTS.

“(a) THREAT AND RISK ASSESSMENTS.—Assistance to Federal, State, and local agencies provided under the program under section 1402 shall include the performance of assessments of the threat and risk of terrorist

employment of weapons of mass destruction against cities and other local areas. Such assessments shall be used by Federal, State, and local agencies to determine the training and equipment requirements under this program and shall be performed as a collaborative effort with State and local agencies.

“(b) CONDUCT OF ASSESSMENTS.—The Department of Justice, as lead Federal agency for domestic crisis management in response to terrorism involving weapons of mass destruction, shall—

“(1) conduct any threat and risk assessment performed under subsection (a) in coordination with appropriate Federal, State, and local agencies; and

“(2) develop procedures and guidance for conduct of the threat and risk assessment in consultation with officials from the intelligence community.

“SEC. 1405. ADVISORY PANEL TO ASSESS DOMESTIC RESPONSE CAPABILITIES FOR TERRORISM INVOLVING WEAPONS OF MASS DESTRUCTION.

“(a) REQUIREMENT FOR PANEL.—The Secretary of Defense, in consultation with the Attorney General, the Secretary of Energy, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency, shall enter into a contract with a federally funded research and development center to establish a panel to assess the capabilities for domestic response to terrorism involving weapons of mass destruction.

“(b) COMPOSITION OF PANEL; SELECTION.—(1) The panel shall be composed of members who shall be private citizens of the United States with knowledge and expertise in emergency response matters.

“(2) Members of the panel shall be selected by the federally funded research and development center in accordance with the terms of the contract established pursuant to subsection (a).

“(c) PROCEDURES FOR PANEL.—The federally funded research and development center shall be responsible for establishing appropriate procedures for the panel, including procedures for selection of a panel chairman.

“(d) DUTIES OF PANEL.—The panel shall—

“(1) assess Federal agency efforts to enhance domestic preparedness for incidents involving weapons of mass destruction;

“(2) assess the progress of Federal training programs for local emergency responses to incidents involving weapons of mass destruction;

“(3) assess deficiencies in programs for response to incidents involving weapons of mass destruction, including a review of unfunded communications, equipment, and planning requirements, and the needs of maritime regions;

“(4) recommend strategies for ensuring effective coordination with respect to Federal agency weapons of mass destruction response efforts, and for ensuring fully effective local response capabilities for weapons of mass destruction incidents; and

“(5) assess the appropriate roles of State and local government in funding effective local response capabilities.

“(e) DEADLINE TO ENTER INTO CONTRACT.—The Secretary of Defense shall enter into the contract required under subsection (a) not later than 60 days after the date of the enactment of this Act [Oct. 17, 1998].

“(f) DEADLINE FOR SELECTION OF PANEL MEMBERS.—Selection of panel members shall be made not later than 30 days after the date on which the Secretary enters into the contract required by subsection (a).

“(g) INITIAL MEETING OF THE PANEL.—The panel shall conduct its first meeting not later than 30 days after the date that all the selections to the panel have been made.

“(h) REPORTS.—(1) Not later than 6 months after the date of the first meeting of the panel, the panel shall submit to the President and to Congress an initial report setting forth its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction.

“(2) Not later than December 15 of each year, beginning in 1999 and ending in 2003, the panel shall submit to the President and to the Congress a report setting forth its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction.

“(i) COOPERATION OF OTHER AGENCIES.—(1) The panel may secure directly from the Department of Defense, the Department of Energy, the Department of Health and Human Services, the Department of Justice, and the Federal Emergency Management Agency, or any other Federal department or agency information that the panel considers necessary for the panel to carry out its duties.

“(2) The Attorney General, the Secretary of Defense, the Secretary of Energy, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and any other official of the United States shall provide the panel with full and timely cooperation in carrying out its duties under this section.

“(j) FUNDING.—The Secretary of Defense shall provide the funds necessary for the panel to carry out its duties from the funds available to the Department of Defense for weapons of mass destruction preparedness initiatives.

“(k) COMPENSATION OF PANEL MEMBERS.—The provisions of paragraph (4) of section 591(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in section 101(d) of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277; 112 Stat. 2681-212)), shall apply to members of the panel in the same manner as to members of the National Commission on Terrorism under that paragraph.

“(l) TERMINATION OF THE PANEL.—The panel shall terminate five years after the date of the appointment of the member selected as chairman of the panel.

“(m) DEFINITION.—In this section, the term ‘weapon of mass destruction’ has the meaning given that term in section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).”

[Pub. L. 107-107, div. A, title XV, § 1514(b)(2), Dec. 28, 2001, 115 Stat. 1274, provided that: “The amendment made by paragraph (1) [amending section 1405(k) of Pub. L. 105-261, set out above] shall apply with respect to periods of service on the advisory panel under section 1405 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [Pub. L. 105-261] on or after the date of the enactment of this Act [Dec. 28, 2001].”]

§ 2302. Definitions

In this chapter:

(1) The term “weapon of mass destruction” means any weapon or device that is intended, or has the capability, to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of—

- (A) toxic or poisonous chemicals or their precursors;
- (B) a disease organism; or
- (C) radiation or radioactivity.

(2) The term “independent states of the former Soviet Union” has the meaning given that term in section 5801 of title 22.

(3) The term “highly enriched uranium” means uranium enriched to 20 percent or more in the isotope U-235.

(Pub. L. 104-201, div. A, title XIV, § 1403, Sept. 23, 1996, 110 Stat. 2717.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title XIV of div. A of Pub. L.