

(Pub. L. 108–458, title I, § 1011(c), Dec. 17, 2004, 118 Stat. 3661.)

CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the National Security Intelligence Reform Act of 2004, and not as part of the National Security Act of 1947 which comprises this chapter.

EFFECTIVE DATE

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

SENSE OF CONGRESS

Pub. L. 108–458, title I, § 1011(b), Dec. 17, 2004, 118 Stat. 3661, provided that: “It is the sense of Congress that—

“(1) the human intelligence officers of the intelligence community have performed admirably and honorably in the face of great personal dangers;

“(2) during an extended period of unprecedented investment and improvements in technical collection means, the human intelligence capabilities of the United States have not received the necessary and commensurate priorities;

“(3) human intelligence is becoming an increasingly important capability to provide information on the asymmetric threats to the national security of the United States;

“(4) the continued development and improvement of a robust and empowered and flexible human intelligence work force is critical to identifying, understanding, and countering the plans and intentions of the adversaries of the United States; and

“(5) an increased emphasis on, and resources applied to, enhancing the depth and breadth of human intelligence capabilities of the United States intelligence community must be among the top priorities of the Director of National Intelligence.”

§ 403–5. Responsibilities of Secretary of Defense pertaining to National Intelligence Program

(a) In general

Consistent with sections 403 and 403–1 of this title, the Secretary of Defense, in consultation with the Director of National Intelligence, shall—

(1) ensure that the budgets of the elements of the intelligence community within the Department of Defense are adequate to satisfy the overall intelligence needs of the Department of Defense, including the needs of the chairman¹ of the Joint Chiefs of Staff and the commanders of the unified and specified commands and, wherever such elements are performing governmentwide functions, the needs of other departments and agencies;

(2) ensure appropriate implementation of the policies and resource decisions of the Director by elements of the Department of Defense within the National Intelligence Program;

(3) ensure that the tactical intelligence activities of the Department of Defense complement and are compatible with intelligence activities under the National Intelligence Program;

(4) ensure that the elements of the intelligence community within the Department of Defense are responsive and timely with re-

spect to satisfying the needs of operational military forces;

(5) eliminate waste and unnecessary duplication among the intelligence activities of the Department of Defense; and

(6) ensure that intelligence activities of the Department of Defense are conducted jointly where appropriate.

(b) Responsibility for performance of specific functions

Consistent with sections 403 and 403–1 of this title, the Secretary of Defense shall ensure—

(1) through the National Security Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the conduct of signals intelligence activities and shall ensure that the product is disseminated in a timely manner to authorized recipients;

(2) through the National Geospatial-Intelligence Agency (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense—

(A) for carrying out tasking of imagery collection;

(B) for the coordination of imagery processing and exploitation activities;

(C) for ensuring the dissemination of imagery in a timely manner to authorized recipients; and

(D) notwithstanding any other provision of law, for—

(i) prescribing technical architecture and standards related to imagery intelligence and geospatial information and ensuring compliance with such architecture and standards; and

(ii) developing and fielding systems of common concern related to imagery intelligence and geospatial information;

(3) through the National Reconnaissance Office (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community;

(4) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified system within the Department of Defense for the production of timely, objective military and military-related intelligence, based upon all sources available to the intelligence community, and shall ensure the appropriate dissemination of such intelligence to authorized recipients;

(5) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), effective management of Department of Defense human intelligence activities, including defense attaches; and

¹ So in original. Probably should be capitalized.

(6) that the military departments maintain sufficient capabilities to collect and produce intelligence to meet—

(A) the requirements of the Director of National Intelligence;

(B) the requirements of the Secretary of Defense or the Chairman of the Joint Chiefs of Staff;

(C) the requirements of the unified and specified combatant commands and of joint operations; and

(D) the specialized requirements of the military departments for intelligence necessary to support tactical commanders, military planners, the research and development process, the acquisition of military equipment, and training and doctrine.

(c) Use of elements of Department of Defense

The Secretary of Defense, in carrying out the functions described in this section, may use such elements of the Department of Defense as may be appropriate for the execution of those functions, in addition to, or in lieu of, the elements identified in this section.

(July 26, 1947, ch. 343, title I, § 105, as added Pub. L. 102-496, title VII, § 706(a), Oct. 24, 1992, 106 Stat. 3194; amended Pub. L. 103-359, title V, § 501(a)(2), Oct. 14, 1994, 108 Stat. 3428; Pub. L. 104-201, div. A, title XI, § 1114(a), Sept. 23, 1996, 110 Stat. 2684; Pub. L. 104-293, title VIII, § 808, Oct. 11, 1996, 110 Stat. 3481; Pub. L. 107-306, title VIII, § 811(b)(1)(A), Nov. 27, 2002, 116 Stat. 2421; Pub. L. 108-136, div. A, title IX, § 921(e)(2), Nov. 24, 2003, 117 Stat. 1569; Pub. L. 108-177, title III, § 361(a), Dec. 13, 2003, 117 Stat. 2625; Pub. L. 108-458, title I, §§ 1071(a)(1)(E), (F), (2)(A), 1072(a)(2), (3), 1074(b)(1)(B), Dec. 17, 2004, 118 Stat. 3689, 3690, 3692, 3694.)

AMENDMENTS

2004—Pub. L. 108-458, § 1074(b)(1)(B)(ii), struck out “Foreign” before “Intelligence” in section catchline.

Subsec. (a). Pub. L. 108-458, § 1072(a)(2), substituted “Consistent with sections 403 and 403-1 of this title, the Secretary” for “The Secretary” in introductory provisions.

Pub. L. 108-458, § 1071(a)(1)(E), substituted “Director of National Intelligence” for “Director of Central Intelligence” in introductory provisions.

Subsec. (a)(2). Pub. L. 108-458, § 1074(b)(1)(B)(i), substituted “National Intelligence Program” for “National Foreign Intelligence Program”.

Pub. L. 108-458, § 1071(a)(2)(A), struck out “of Central Intelligence” after “Director”.

Subsec. (a)(3). Pub. L. 108-458, § 1074(b)(1)(B)(i), substituted “National Intelligence Program” for “National Foreign Intelligence Program”.

Subsec. (b). Pub. L. 108-458, § 1072(a)(3), substituted “403 and 403-1” for “403-3 and 403-4” in introductory provisions.

Subsec. (b)(6)(A). Pub. L. 108-458, § 1071(a)(1)(F), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2003—Subsec. (b)(2). Pub. L. 108-136, § 921(e)(2), substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

Subsec. (d). Pub. L. 108-177 struck out subsec. (d) which related to annual evaluations of performance and responsiveness of certain elements of the intelligence community.

Subsec. (d)(3). Pub. L. 108-136, § 921(e)(2), substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

2002—Subsec. (d). Pub. L. 107-306 amended heading and text of subsec. (d) generally. Prior to amendment,

text read as follows: “The Director of Central Intelligence, in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, shall submit each year to the Committee on Foreign Intelligence of the National Security Council and the appropriate congressional committees (as defined in section 404d(c) of this title) an evaluation of the performance and the responsiveness of the National Security Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency in meeting their national missions.”

1996—Subsec. (a). Pub. L. 104-293, § 808(1), inserted “, in consultation with the Director of Central Intelligence,” after “Secretary of Defense” in introductory provisions.

Subsec. (b)(2). Pub. L. 104-201 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “through the Central Imagery Office (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense for carrying out tasking of imagery collection, for the coordination of imagery processing and exploitation activities, and for ensuring the dissemination of imagery in a timely manner to authorized recipients;”.

Subsec. (d). Pub. L. 104-293, § 808(2), added subsec. (d).

1994—Subsec. (b)(2). Pub. L. 103-359 substituted “the Central Imagery Office” for “a central imagery authority”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-177 effective Dec. 31, 2003, see section 361(n) of Pub. L. 108-177, set out as a note under section 1611 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

ROLE OF DIRECTOR OF CENTRAL INTELLIGENCE IN EXPERIMENTAL PERSONNEL PROGRAM FOR CERTAIN SCIENTIFIC AND TECHNICAL PERSONNEL

Pub. L. 106-567, title V, § 501, Dec. 27, 2000, 114 Stat. 2850, as amended by Pub. L. 108-136, div. A, title IX, § 921(g), Nov. 24, 2003, 117 Stat. 1570, provided that: “If the Director of Central Intelligence requests that the Secretary of Defense exercise any authority available to the Secretary under section 1101(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 5 U.S.C. 3104 note) to carry out a program of special personnel management authority at the National Geospatial-Intelligence Agency and the National Security Agency in order to facilitate recruitment of eminent experts in science and engineering at such agencies, the Secretary shall respond to such request not later than 30 days after the date of such request.”

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of this title.]

§ 403–5a. Assistance to United States law enforcement agencies**(a) Authority to provide assistance**

Subject to subsection (b) of this section, elements of the intelligence community may, upon the request of a United States law enforcement agency, collect information outside the United States about individuals who are not United States persons. Such elements may collect such information notwithstanding that the law enforcement agency intends to use the information collected for purposes of a law enforcement investigation or counterintelligence investigation.

(b) Limitation on assistance by elements of Department of Defense

(1) With respect to elements within the Department of Defense, the authority in subsection (a) of this section applies only to the following:

- (A) The National Security Agency.
- (B) The National Reconnaissance Office.
- (C) The National Geospatial-Intelligence Agency.
- (D) The Defense Intelligence Agency.

(2) Assistance provided under this section by elements of the Department of Defense may not include the direct participation of a member of the Army, Navy, Air Force, or Marine Corps in an arrest or similar activity.

(3) Assistance may not be provided under this section by an element of the Department of Defense if the provision of such assistance will adversely affect the military preparedness of the United States.

(4) The Secretary of Defense shall prescribe regulations governing the exercise of authority under this section by elements of the Department of Defense, including regulations relating to the protection of sources and methods in the exercise of such authority.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term “United States law enforcement agency” means any department or agency of the Federal Government that the Attorney General designates as law enforcement agency for purposes of this section.

(2) The term “United States person” means the following:

- (A) A United States citizen.
- (B) An alien known by the intelligence agency concerned to be a permanent resident alien.
- (C) An unincorporated association substantially composed of United States citizens or permanent resident aliens.
- (D) A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

(July 26, 1947, ch. 343, title I, §105A, as added Pub. L. 104–293, title VIII, §814(a), Oct. 11, 1996, 110 Stat. 3483; amended Pub. L. 108–136, div. A, title IX, §921(e)(3), Nov. 24, 2003, 117 Stat. 1569.)

AMENDMENTS

2003—Subsec. (b)(1)(C). Pub. L. 108–136 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

§ 403–5b. Disclosure of foreign intelligence acquired in criminal investigations; notice of criminal investigations of foreign intelligence sources**(a) Disclosure of foreign intelligence**

(1) Except as otherwise provided by law and subject to paragraph (2), the Attorney General, or the head of any other department or agency of the Federal Government with law enforcement responsibilities, shall expeditiously disclose to the Director of National Intelligence, pursuant to guidelines developed by the Attorney General in consultation with the Director, foreign intelligence acquired by an element of the Department of Justice or an element of such department or agency, as the case may be, in the course of a criminal investigation.

(2) The Attorney General by regulation and in consultation with the Director may provide for exceptions to the applicability of paragraph (1) for one or more classes of foreign intelligence, or foreign intelligence with respect to one or more targets or matters, if the Attorney General determines that disclosure of such foreign intelligence under that paragraph would jeopardize an ongoing law enforcement investigation or impair other significant law enforcement interests.

(b) Procedures for notice of criminal investigations

Not later than 180 days after October 26, 2001, the Attorney General, in consultation with the Director of National Intelligence, shall develop guidelines to ensure that after receipt of a report from an element of the intelligence community of activity of a foreign intelligence source or potential foreign intelligence source that may warrant investigation as criminal activity, the Attorney General provides notice to the Director, within a reasonable period of time, of his intention to commence, or decline to commence, a criminal investigation of such activity.

(c) Procedures

The Attorney General shall develop procedures for the administration of this section, including the disclosure of foreign intelligence by elements of the Department of Justice, and elements of other departments and agencies of the Federal Government, under subsection (a) of this section and the provision of notice with respect to criminal investigations under subsection (b) of this section.

(July 26, 1947, ch. 343, title I, §105B, as added Pub. L. 107–56, title IX, §905(a)(2), Oct. 26, 2001, 115 Stat. 388; amended Pub. L. 108–458, title I, §1071(a)(1)(G), (H), (2)(B), (C), Dec. 17, 2004, 118 Stat. 3689, 3690.)

PRIOR PROVISIONS

A prior section 403–5b, act July 26, 1947, ch. 343, title I, §105B, as added Pub. L. 106–120, title V, §501(a)(1), Dec. 3, 1999, 113 Stat. 1616, which related to protection of operational files of the National Imagery and Mapping Agency, was renumbered by subsequent acts and transferred, see section 432 of this title.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458, §1071(a)(1)(G), substituted “Director of National Intelligence” for “Director of Central Intelligence”.