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**108th Congress** ..  
**1st Session**

**COMMITTEE PRINT**

**COMPILATION OF INTELLIGENCE LAWS AND RE-  
LATED LAWS AND EXECUTIVE ORDERS OF INTEREST  
TO THE NATIONAL INTELLIGENCE COMMUNITY**

**As Amended through March 25, 2003**

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**PREPARED FOR THE USE OF THE  
PERMANENT SELECT COMMITTEE ON  
INTELLIGENCE**

**OF THE  
HOUSE OF REPRESENTATIVES**



**JUNE 2003**

**Printed for the use of the Permanent Select Committee on Intelligence  
of the House of Representatives**



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REPRESENTATIVES

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## **FOREWORD**

This Committee Print gathers together in one publication those statutes which are within the jurisdiction of the House Permanent Select Committee on Intelligence and statutes and Executive orders which are of interest to the Committee and the intelligence community.

Amended through March 25, 2003, the print will be updated when necessary to reflect significant changes in the laws and Executive orders which bear on intelligence activities.

PORTER GOSS,

*Chairman, Permanent Select Committee on Intelligence.*

For changes after the closing date of this publication (March 25, 2003) to provisions of law in this publication, see the United States Code Classification Tables published by the Office of the Law Revision Counsel of the House of Representatives at <http://uscode.house.gov/usctt.htm>.

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**I. INTELLIGENCE AGENCY STATUTES**

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## A. CENTRAL INTELLIGENCE AGENCY

### NATIONAL SECURITY ACT OF 1947

(Chapter 343; 61 Stat. 496; approved July 26, 1947)

AN ACT To promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SHORT TITLE

That [50 U.S.C. 401 note] this Act may be cited as the “National Security Act of 1947”.

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<sup>1</sup> Item editorially inserted.

<sup>2</sup> This section was redesignated as section 108 by section 705(a)(2) of P.L. 102–496, but this entry in the table of contents was not repealed.

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<sup>1</sup>Section repealed without amending table of contents.

<sup>2</sup>Item editorially inserted.

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## DECLARATION OF POLICY

SEC. 2. [50 U.S.C. 401] In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense; to provide that each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense; to provide for their unified direction under civilian control of the Secretary of Defense but not to merge these departments or services; to provide for the establishment of unified or specified combatant commands, and a clear and direct line of command to such commands; to eliminate unnecessary duplication in the Department of Defense, and particularly in the field of research and engineering by vesting its overall direction and control in the Secretary of Defense; to provide more effective, efficient, and economical administration in the Department of Defense; to provide for the unified strategic direction of the combatant forces, for their operation under unified command, and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an overall armed forces general staff.

## DEFINITIONS

SEC. 3. [50 U.S.C. 401a] As used in this Act:

- (1) The term “intelligence” includes foreign intelligence and counterintelligence.
- (2) The term “foreign intelligence” means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(3) The term “counterintelligence” means information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(4) The term “intelligence community” includes—

(A) the Office of the Director of Central Intelligence, which shall include the Office of the Deputy Director of Central Intelligence, the National Intelligence Council (as provided for in section 105(b)(3)), and such other offices as the Director may designate;

(B) the Central Intelligence Agency;

(C) the National Security Agency;

(D) the Defense Intelligence Agency;

(E) the National Imagery and Mapping Agency

(F) the National Reconnaissance Office;

(G) other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(H) the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, and the Coast Guard;

(I) the Bureau of Intelligence and Research of the Department of State;

(J) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information; and

(K) such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

(5) The terms “national intelligence” and “intelligence related to the national security”—

(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the Director of Central Intelligence and the Attorney General, or otherwise as expressly provided for in this title.

(6) The term “National Foreign Intelligence Program” refers to all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of Central Intelligence and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces.

- (7) The term “congressional intelligence committees” means—
- (A) the Select Committee on Intelligence of the Senate;
  - and
  - (B) the Permanent Select Committee on Intelligence of the House of Representatives.

## TITLE I—COORDINATION FOR NATIONAL SECURITY

### NATIONAL SECURITY COUNCIL

SEC. 101. [50 U.S.C. 402] (a) There is hereby established a council to be known as the National Security Council (hereinafter in this section referred to as the “Council”).

The President of the United States shall preside over meetings of the Council: *Provided*, That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of<sup>1</sup>—

- (1) the President;
- (2) the Vice President;
- (3) the Secretary of State;
- (4) the Secretary of Defense;
- (5) the Director for Mutual Security;
- (6) the Chairman of the National Security Resources Board; and
- (7) The Secretaries and Under Secretaries of other executive departments and the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

- (1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and
- (2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

<sup>1</sup>The positions of Director for Mutual Security, Chairman of the National Security Resources Board, Chairman of the Munitions Board, and Chairman of the Research and Development Board have been abolished by various Reorganization Plans. The statutory members of the National Security Council are the President, Vice President, Secretary of State, and Secretary of Defense.

(c) The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President, and who shall receive compensation at the rate of \$10,000 a year.<sup>1</sup> The executive secretary, subject to the direction of the Council, is hereby authorized, subject to the civil-service laws and the Classification Act of 1923, as amended,<sup>2</sup> to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

(e) The Chairman (or in his absence the Vice Chairman) of the Joint Chiefs of Staff may, in his role as principal military adviser to the National Security Council and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(f) The Director of National Drug Control Policy may, in the role of the Director as principal adviser to the National Security Council on national drug control policy, and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(g) The President shall establish with the National Security Council a board to be known as the "Board for Low Intensity Conflict". The principal function of the board shall be to coordinate the policies of the United States for low intensity conflict.

(h)(1) There is established within the National Security Council a committee to be known as the Committee on Foreign Intelligence (in this subsection referred to as the "Committee").

(2) The Committee shall be composed of the following:

(A) The Director of Central Intelligence.

(B) The Secretary of State.

(C) The Secretary of Defense.

(D) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.

(E) Such other members as the President may designate.

(3) The function of the Committee shall be to assist the Council in its activities by—

(A) identifying the intelligence required to address the national security interests of the United States as specified by the President;

(B) establishing priorities (including funding priorities) among the programs, projects, and activities that address such interests and requirements; and

(C) establishing policies relating to the conduct of intelligence activities of the United States, including appropriate roles and missions for the elements of the intelligence community and appropriate targets of intelligence collection activities.

<sup>1</sup> The specification of the salary of the head of the National Security Council staff is obsolete and has been superseded.

<sup>2</sup> The Classification Act of 1923 was repealed by the Classification Act of 1949. The Classification Act of 1949 was repealed by the law enacting title 5, United States Code (Public Law 89-544, Sept. 6, 1966, 80 Stat. 378), and its provisions were codified as chapter 51 and chapter 53 of title 5. Section 7(b) of that Act (80 Stat. 631) provided: "A reference to a law replaced by sections 1-6 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act."

(4) In carrying out its function, the Committee shall—

(A) conduct an annual review of the national security interests of the United States;

(B) identify on an annual basis, and at such other times as the Council may require, the intelligence required to meet such interests and establish an order of priority for the collection and analysis of such intelligence; and

(C) conduct an annual review of the elements of the intelligence community in order to determine the success of such elements in collecting, analyzing, and disseminating the intelligence identified under subparagraph (B).

(5) The Committee shall submit each year to the Council and to the Director of Central Intelligence a comprehensive report on its activities during the preceding year, including its activities under paragraphs (3) and (4).

(i)(1) There is established within the National Security Council a committee to be known as the Committee on Transnational Threats (in this subsection referred to as the “Committee”).

(2) The Committee shall include the following members:

(A) The Director of Central Intelligence.

(B) The Secretary of State.

(C) The Secretary of Defense.

(D) The Attorney General.

(E) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.

(F) Such other members as the President may designate.

(3) The function of the Committee shall be to coordinate and direct the activities of the United States Government relating to combatting transnational threats.

(4) In carrying out its function, the Committee shall—

(A) identify transnational threats;

(B) develop strategies to enable the United States Government to respond to transnational threats identified under subparagraph (A);

(C) monitor implementation of such strategies;

(D) make recommendations as to appropriate responses to specific transnational threats;

(E) assist in the resolution of operational and policy differences among Federal departments and agencies in their responses to transnational threats;

(F) develop policies and procedures to ensure the effective sharing of information about transnational threats among Federal departments and agencies, including law enforcement agencies and the elements of the intelligence community; and

(G) develop guidelines to enhance and improve the coordination of activities of Federal law enforcement agencies and elements of the intelligence community outside the United States with respect to transnational threats.

(5) For purposes of this subsection, the term “transnational threat” means the following:

(A) Any transnational activity (including international terrorism, narcotics trafficking, the proliferation of weapons of mass destruction and the delivery systems for such weapons, and organized crime) that threatens the national security of the United States.

(B) Any individual or group that engages in an activity referred to in subparagraph (A).

(j) The Director of Central Intelligence (or, in the Director's absence, the Deputy Director of Central Intelligence) may, in the performance of the Director's duties under this Act and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(i)<sup>1</sup> It is the sense of the Congress that there should be within the staff of the National Security Council a Special Adviser to the President on International Religious Freedom, whose position should be comparable to that of a director within the Executive Office of the President. The Special Adviser should serve as a resource for executive branch officials, compiling and maintaining information on the facts and circumstances of violations of religious freedom (as defined in section 3 of the International Religious Freedom Act of 1998), and making policy recommendations. The Special Adviser should serve as liaison with the Ambassador at Large for International Religious Freedom, the United States Commission on International Religious Freedom, Congress and, as advisable, religious nongovernmental organizations.

#### OFFICE OF THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 102. [50 U.S.C. 403] (a) DIRECTOR OF CENTRAL INTELLIGENCE.—There is a Director of Central Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall—

(1) serve as head of the United States intelligence community;

(2) act as the principal adviser to the President for intelligence matters related to the national security; and

(3) serve as head of the Central Intelligence Agency.

(b) DEPUTY DIRECTORS OF CENTRAL INTELLIGENCE.—(1) There is a Deputy Director of Central Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) There is a Deputy Director of Central Intelligence for Community Management who shall be appointed by the President, by and with the advice and consent of the Senate.

(3) Each Deputy Director of Central Intelligence shall have extensive national security expertise.

(c) MILITARY STATUS OF DIRECTOR AND DEPUTY DIRECTORS.—(1)(A) Not more than one of the individuals serving in the positions specified in subparagraph (B) may be a commissioned officer of the Armed Forces, whether in active or retired status.

(B) The positions referred to in subparagraph (A) are the following:

(i) The Director of Central Intelligence.

(ii) The Deputy Director of Central Intelligence.

(iii) The Deputy Director of Central Intelligence for Community Management.

(2) It is the sense of Congress that, under ordinary circumstances, it is desirable that one of the individuals serving in the positions specified in paragraph (1)(B)—

<sup>1</sup>So in law. Probably should be subsection (k). Section 301 of Public Law 105-292, Oct. 27, 1998, inserts a new subsection (i) at the end of section 101 of the National Security Act of 1947.

- (A) be a commissioned officer of the Armed Forces, whether in active or retired status; or
- (B) have, by training or experience, an appreciation of military intelligence activities and requirements.
- (3) A commissioned officer of the Armed Forces, while serving in a position specified in paragraph (1)(B)—
- (A) shall not be subject to supervision or control by the Secretary of Defense or by any officer or employee of the Department of Defense;
- (B) shall not exercise, by reason of the officer's status as a commissioned officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law; and
- (C) shall not be counted against the numbers and percentages of commissioned officers of the rank and grade of such officer authorized for the military department of that officer.
- (4) Except as provided in subparagraph (A) or (B) of paragraph (3), the appointment of an officer of the Armed Forces to a position specified in paragraph (1)(B) shall not affect the status, position, rank, or grade of such officer in the Armed Forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, position, rank, or grade.
- (5) A commissioned officer of the Armed Forces on active duty who is appointed to a position specified in paragraph (1)(B), while serving in such position and while remaining on active duty, shall continue to receive military pay and allowances and shall not receive the pay prescribed for such position. Funds from which such pay and allowances are paid shall be reimbursed from funds available to the Director of Central Intelligence.
- (d) DUTIES OF DEPUTY DIRECTORS.—(1)(A) The Deputy Director of Central Intelligence shall assist the Director of Central Intelligence in carrying out the Director's responsibilities under this Act.
- (B) The Deputy Director of Central Intelligence shall act for, and exercise the powers of, the Director of Central Intelligence during the Director's absence or disability or during a vacancy in the position of the Director of Central Intelligence.
- (2) The Deputy Director of Central Intelligence for Community Management shall, subject to the direction of the Director of Central Intelligence, be responsible for the following:
- (A) Directing the operations of the Community Management Staff.
- (B) Through the Assistant Director of Central Intelligence for Collection, ensuring the efficient and effective collection of national intelligence using technical means and human sources.
- (C) Through the Assistant Director of Central Intelligence for Analysis and Production, conducting oversight of the analysis and production of intelligence by elements of the intelligence community.
- (D) Through the Assistant Director of Central Intelligence for Administration, performing community-wide management functions of the intelligence community, including the management of personnel and resources.

(3)(A) The Deputy Director of Central Intelligence takes precedence in the Office of the Director of Central Intelligence immediately after the Director of Central Intelligence.

(B) The Deputy Director of Central Intelligence for Community Management takes precedence in the Office of the Director of Central Intelligence immediately after the Deputy Director of Central Intelligence.

(e) OFFICE OF THE DIRECTOR OF CENTRAL INTELLIGENCE.—(1) There is an Office of the Director of Central Intelligence. The function of the Office is to assist the Director of Central Intelligence in carrying out the duties and responsibilities of the Director under this Act and to carry out such other duties as may be prescribed by law.

(2) The Office of the Director of Central Intelligence is composed of the following:

(A) The Director of Central Intelligence.

(B) The Deputy Director of Central Intelligence.

(C) The Deputy Director of Central Intelligence for Community Management.

(D) The National Intelligence Council.

(E) The Assistant Director of Central Intelligence for Collection.

(F) The Assistant Director of Central Intelligence for Analysis and Production.

(G) The Assistant Director of Central Intelligence for Administration.

(H) Such other offices and officials as may be established by law or the Director of Central Intelligence may establish or designate in the Office.

(3) To assist the Director in fulfilling the responsibilities of the Director as head of the intelligence community, the Director shall employ and utilize in the Office of the Director of Central Intelligence a professional staff having an expertise in matters relating to such responsibilities and may establish permanent positions and appropriate rates of pay with respect to that staff.

(4) The Office of the Director of Central Intelligence shall, for administrative purposes, be within the Central Intelligence Agency.

(f) ASSISTANT DIRECTOR OF CENTRAL INTELLIGENCE FOR COLLECTION.—(1) To assist the Director of Central Intelligence in carrying out the Director's responsibilities under this Act, there shall be an Assistant Director of Central Intelligence for Collection who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Assistant Director for Collection shall assist the Director of Central Intelligence in carrying out the Director's collection responsibilities in order to ensure the efficient and effective collection of national intelligence.

(g) ASSISTANT DIRECTOR OF CENTRAL INTELLIGENCE FOR ANALYSIS AND PRODUCTION.—(1) To assist the Director of Central Intelligence in carrying out the Director's responsibilities under this Act, there shall be an Assistant Director of Central Intelligence for Analysis and Production who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Assistant Director for Analysis and Production shall—

(A) oversee the analysis and production of intelligence by the elements of the intelligence community;

(B) establish standards and priorities relating to such analysis and production;

(C) monitor the allocation of resources for the analysis and production of intelligence in order to identify unnecessary duplication in the analysis and production of intelligence;

(D) direct competitive analysis of analytical products having National<sup>1</sup> importance;

(E) identify intelligence to be collected for purposes of the Assistant Director of Central Intelligence for Collection; and

(F) provide such additional analysis and production of intelligence as the President and the National Security Council may require.

(h) ASSISTANT DIRECTOR OF CENTRAL INTELLIGENCE FOR ADMINISTRATION.—(1) To assist the Director of Central Intelligence in carrying out the Director's responsibilities under this Act, there shall be an Assistant Director of Central Intelligence for Administration who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Assistant Director for Administration shall manage such activities relating to the administration of the intelligence community as the Director of Central Intelligence shall require.

#### CENTRAL INTELLIGENCE AGENCY

SEC. 102A. [50 U.S.C. 403-1] There is a Central Intelligence Agency. The function of the Agency shall be to assist the Director of Central Intelligence in carrying out the responsibilities referred to in paragraphs (1) through (5) of section 103(d) of this Act.

#### RESPONSIBILITIES OF THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 103. [50 U.S.C. 403-3] (a) PROVISION OF INTELLIGENCE.—(1) Under the direction of the National Security Council, the Director of Central Intelligence shall be responsible for providing national intelligence—

(A) to the President;

(B) to the heads of departments and agencies of the executive branch;

(C) to the Chairman of the Joint Chiefs of Staff and senior military commanders; and

(D) where appropriate, to the Senate and House of Representatives and the committees thereof.

(2) Such national intelligence should be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

(b) NATIONAL INTELLIGENCE COUNCIL.—(1)(A) There is established within the Office of the Director of Central Intelligence the National Intelligence Council (hereafter in this section referred to as the Council"). The Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the Director of Central Intelligence.

<sup>1</sup> So in original. Probably should be "national".

(B) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council, or as contractors of the Council or employees of such contractors, to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

(2) The Council shall—

(A) produce national intelligence estimates for the Government, including, whenever the Council considers appropriate, alternative views held by elements of the intelligence community;

(B) evaluate community-wide collection and production of intelligence by the intelligence community and the requirements and resources of such collection and production; and

(C) otherwise assist the Director in carrying out the responsibilities described in subsection (a).

(3) Within their respective areas of expertise and under the direction of the Director, the members of the Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the Government.

(4) Subject to the direction and control of the Director of Central Intelligence, the Council may carry out its responsibilities under this subsection by contract, including contracts for substantive experts necessary to assist the Council with particular assessments under this subsection.

(5) The Director shall make available to the Council such staff as may be necessary to permit the Council to carry out its responsibilities under this subsection and shall take appropriate measures to ensure that the Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence. The Council shall also be readily accessible to policymaking officials and other appropriate individuals not otherwise associated with the intelligence community.

(6) The heads of elements within the intelligence community shall, as appropriate, furnish such support to the Council, including the preparation of intelligence analyses, as may be required by the Director.

(c) HEAD OF THE INTELLIGENCE COMMUNITY.—In the Director's capacity as head of the intelligence community, the Director shall—

(1) facilitate the development of an annual budget for intelligence and intelligence-related activities of the United States by—

(A) developing and presenting to the President an annual budget for the National Foreign Intelligence Program; and

(B) participating in the development by the Secretary of Defense of the annual budgets for the Joint Military Intelligence Program and the Tactical Intelligence and Related Activities Program;

(2) establish the requirements and priorities to govern the collection of national intelligence by elements of the intelligence community;

(3) approve collection requirements, determine collection priorities, and resolve conflicts in collection priorities levied on national collection assets, except as otherwise agreed with the Secretary of Defense pursuant to the direction of the President;

(4) promote and evaluate the utility of national intelligence to consumers within the Government;

(5) eliminate waste and unnecessary duplication within the intelligence community;

(6) establish requirements and priorities for foreign intelligence information to be collected under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), and provide assistance to the Attorney General to ensure that information derived from electronic surveillance or physical searches under that Act is disseminated so it may be used efficiently and effectively for foreign intelligence purposes, except that the Director shall have no authority to direct, manage, or undertake electronic surveillance or physical search operations pursuant to that Act unless otherwise authorized by statute or Executive order;

(7) protect intelligence sources and methods from unauthorized disclosure; and

(8) perform such other functions as the President or the National Security Council may direct.

(d) HEAD OF THE CENTRAL INTELLIGENCE AGENCY.—In the Director's capacity as head of the Central Intelligence Agency, the Director shall—

(1) collect intelligence through human sources and by other appropriate means, except that the Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

(2) provide overall direction for the collection of national intelligence through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other agencies of the Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that the risks to the United States and those involved in such collection are minimized;

(3) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence;

(4) perform such additional services as are of common concern to the elements of the intelligence community, which services the Director of Central Intelligence determines can be more efficiently accomplished centrally; and

(5) perform such other functions and duties related to intelligence affecting the national security as the President or the National Security Council may direct.

#### AUTHORITIES OF THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 104. [50 U.S.C. 403-4] (a) ACCESS TO INTELLIGENCE.—To the extent recommended by the National Security Council and approved by the President, the Director of Central Intelligence shall have access to all intelligence related to the national security which

is collected by any department, agency, or other entity of the United States.

(b) APPROVAL OF BUDGETS.—The Director of Central Intelligence shall provide guidance to elements of the intelligence community for the preparation of their annual budgets and shall approve such budgets before their incorporation in the National Foreign Intelligence Program.

(c) ROLE OF DCI IN REPROGRAMMING.—No funds made available under the National Foreign Intelligence Program may be reprogrammed by any element of the intelligence community without the prior approval of the Director of Central Intelligence except in accordance with procedures issued by the Director. The Secretary of Defense shall consult with the Director of Central Intelligence before reprogramming funds made available under the Joint Military Intelligence Program.

(d) TRANSFER OF FUNDS OR PERSONNEL WITHIN THE NATIONAL FOREIGN INTELLIGENCE PROGRAM.—(1)(A) In addition to any other authorities available under law for such purposes, the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, may transfer funds appropriated for a program within the National Foreign Intelligence Program to another such program and, in accordance with procedures to be developed by the Director and the heads of affected departments and agencies, may transfer personnel authorized for an element of the intelligence community to another such element for periods up to a year.

(B) The Director may only delegate any duty or authority given the Director under this subsection to the Deputy Director of Central Intelligence for Community Management.

(2)(A) A transfer of funds or personnel may be made under this subsection only if—

(i) the funds or personnel are being transferred to an activity that is a higher priority intelligence activity;

(ii) the need for funds or personnel for such activity is based on unforeseen requirements;

(iii) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the Central Intelligence Agency;

(iv) the transfer does not involve a transfer of funds or personnel from the Federal Bureau of Investigation; and

(v) subject to subparagraph (B), the Secretary or head of the department which contains the affected element or elements of the intelligence community does not object to such transfer.

(B)(i) Except as provided in clause (ii), the authority to object to a transfer under subparagraph (A)(v) may not be delegated by the Secretary or head of the department involved.

(ii) With respect to the Department of Defense, the authority to object to such a transfer may be delegated by the Secretary of Defense, but only to the Deputy Secretary of Defense.

(iii) An objection to a transfer under subparagraph (A)(v) shall have no effect unless submitted to the Director of Central Intelligence in writing.

(3) Funds transferred under this subsection shall remain available for the same period as the appropriations account to which transferred.

(4) Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer and how it satisfies the requirements of this subsection. In addition, the congressional intelligence committees shall be promptly notified of any transfer of funds made pursuant to this subsection in any case in which the transfer would not have otherwise required reprogramming notification under procedures in effect as of the date of the enactment of this section.

(5) The Director shall promptly submit to the congressional intelligence committees and, in the case of the transfer of personnel to or from the Department of Defense, the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, a report on any transfer of personnel made pursuant to this subsection. The Director shall include in any such report an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

(e) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the National Security Council and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Director shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

(f) USE OF PERSONNEL.—The Director shall, in coordination with the heads of departments and agencies with elements in the intelligence community, institute policies and programs within the intelligence community—

(1) to provide for the rotation of personnel between the elements of the intelligence community, where appropriate, and to make such rotated service a factor to be considered for promotion to senior positions; and

(2) to consolidate, wherever possible, personnel, administrative, and security programs to reduce the overall costs of these activities within the intelligence community.

(g) STANDARDS AND QUALIFICATIONS FOR PERFORMANCE OF INTELLIGENCE ACTIVITIES.—The Director, acting as the head of the intelligence community, shall, in consultation with the heads of affected agencies, develop standards and qualifications for persons engaged in the performance of intelligence activities within the intelligence community.

(h) TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.—Notwithstanding the provisions of any other law, the Director may, in the Director's discretion, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director shall deem such termination necessary or advisable in the interests of the United States. Any such termination shall not affect the right of the officer or employee terminated to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the Office of Personnel Management.

RESPONSIBILITIES OF THE SECRETARY OF DEFENSE PERTAINING TO  
THE NATIONAL FOREIGN INTELLIGENCE PROGRAM

SEC. 105. [50 U.S.C. 403–5] (a) IN GENERAL.—The Secretary of Defense, in consultation with the Director of Central 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 chairman 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 of Central Intelligence by elements of the Department of Defense within the National Foreign Intelligence Program;

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

(4) ensure that the elements of the intelligence community within the Department of Defense are responsive and timely with respect 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 THE PERFORMANCE OF SPECIFIC FUNCTIONS.—Consistent with sections 103 and 104 of this Act, 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 Imagery and Mapping 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
- (6) that the military departments maintain sufficient capabilities to collect and produce intelligence to meet—
- (A) the requirements of the Director of Central 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.
- (d) ANNUAL EVALUATION OF PERFORMANCE AND RESPONSIVENESS OF CERTAIN ELEMENTS OF INTELLIGENCE COMMUNITY.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the evaluation described in paragraph (3).
- (2) The Director shall submit each year to the Committee on Foreign Intelligence of the National Security Council, and to the Committees on Armed Services and Appropriations of the Senate and House of Representatives, the evaluation described in paragraph (3).
- (3) An evaluation described in this paragraph is an evaluation of the performance and responsiveness of the National Security Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency in meeting their respective national missions.

(4) The Director shall submit each evaluation under this subsection in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff.

ASSISTANCE TO UNITED STATES LAW ENFORCEMENT AGENCIES

SEC. 105A. [50 U.S.C. 403–5a] (a) **AUTHORITY TO PROVIDE ASSISTANCE.**—Subject to subsection (b), 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) applies only to the following:

- (A) The National Security Agency.
- (B) The National Reconnaissance Office.
- (C) The National Imagery and Mapping 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):

(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.

DISCLOSURE OF FOREIGN INTELLIGENCE ACQUIRED IN CRIMINAL INVESTIGATIONS; NOTICE OF CRIMINAL INVESTIGATIONS OF FOREIGN INTELLIGENCE SOURCES

SEC. 105B. [50 U.S.C. 403–5b] (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 Central 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 of Central Intelligence 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 the date of enactment of this section, the Attorney General, in consultation with the Director of Central 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 of Central Intelligence, 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) and the provision of notice with respect to criminal investigations under subsection (b).

PROTECTION OF OPERATIONAL FILES OF THE NATIONAL IMAGERY AND  
MAPPING AGENCY

SEC. 105C. [50 U.S.C. 403–5c] (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the National Imagery and Mapping Agency, with the coordination of the Director of Central Intelligence, may exempt operational files of the National Imagery and Mapping Agency from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

(2)(A) Subject to subparagraph (B), for the purposes of this section, the term “operational files” means files of the National Imagery and Mapping Agency (hereafter in this section referred to as “NIMA”) concerning the activities of NIMA that before the establishment of NIMA were performed by the National Photographic Interpretation Center of the Central Intelligence Agency (NPIC), that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

(B) Files which are the sole repository of disseminated intelligence are not operational files.

(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code;

(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code; or

(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

(i) The congressional intelligence committees.

(ii) The Intelligence Oversight Board.

(iii) The Department of Justice.

(iv) The Office of General Counsel of NIMA.

(v) The Office of the Director of NIMA.

(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

(C) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1) and which have been returned to exempted operational files for sole retention shall be subject to search and review.

(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of this section, and which specifically cites and repeals or modifies its provisions.

(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NIMA has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NIMA, such information shall be examined ex parte, in camera by the court.

(ii) The court shall, to the fullest extent practicable, determine the issues of fact based on sworn written submissions of the parties.

(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support

such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NIMA shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

(II) The court may not order NIMA to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NIMA's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

(vi) If the court finds under this paragraph that NIMA has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NIMA to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this subsection.

(vii) If at any time following the filing of a complaint pursuant to this paragraph NIMA agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence prior to submission to the court.

(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of the National Imagery and Mapping Agency and the Director of Central Intelligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(3) A complainant that alleges that NIMA has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Co-

lumbia. In such a proceeding, the court's review shall be limited to determining the following:

(A) Whether NIMA has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of this section or before the expiration of the 10-year period beginning on the date of the most recent review.

(B) Whether NIMA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

PROTECTION OF OPERATIONAL FILES OF THE NATIONAL  
RECONNAISSANCE OFFICE

SEC. 105D. [50 U.S.C. 403–5e] (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the National Reconnaissance Office, with the coordination of the Director of Central Intelligence, may exempt operational files of the National Reconnaissance Office from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

(2)(A) Subject to subparagraph (B), for the purposes of this section, the term “operational files” means files of the National Reconnaissance Office (hereafter in this section referred to as “NRO”) that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

(B) Files which are the sole repository of disseminated intelligence are not operational files.

(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code;

(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code; or

(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

(i) The Permanent Select Committee on Intelligence of the House of Representatives.

(ii) The Select Committee on Intelligence of the Senate.

(iii) The Intelligence Oversight Board.

(iv) The Department of Justice.

(v) The Office of General Counsel of NRO.

(vi) The Office of the Director of NRO.

(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not

affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

(C) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.

(D) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1) and which have been returned to exempted operational files for sole retention shall be subject to search and review.

(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of this section, and which specifically cites and repeals or modifies its provisions.

(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NRO has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NRO, such information shall be examined *ex parte*, *in camera* by the court.

(ii) The court shall, to the fullest extent practicable, determine the issues of fact based on sworn written submissions of the parties.

(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NRO shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

(II) The court may not order NRO to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NRO's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

(vi) If the court finds under this paragraph that NRO has improperly withheld requested records because of failure to

comply with any provision of this subsection, the court shall order NRO to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this subsection.

(vii) If at any time following the filing of a complaint pursuant to this paragraph NRO agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence prior to submission to the court.

(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of the National Reconnaissance Office and the Director of Central Intelligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(3) A complainant that alleges that NRO has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining the following:

(A) Whether NRO has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of this section or before the expiration of the 10-year period beginning on the date of the most recent review.

(B) Whether NRO, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

APPOINTMENT OF OFFICIALS RESPONSIBLE FOR INTELLIGENCE-RELATED ACTIVITIES

SEC. 106. [50 U.S.C. 403-6] (a) CONCURRENCE OF DCI IN CERTAIN APPOINTMENTS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the Secretary of Defense shall obtain the concurrence of the Director of Central Intelligence before recommending to the President an individual for appointment to the position. If the Director does not concur in the recommendation, the Secretary may make the recommendation to the President without the Director's concurrence, but shall include in the recommendation a statement that the Director does not concur in the recommendation.

(2) Paragraph (1) applies to the following positions:

- (A) The Director of the National Security Agency.
  - (B) The Director of the National Reconnaissance Office.
  - (C) The Director of the National Imagery and Mapping Agency.
- (b) CONSULTATION WITH DCI IN CERTAIN APPOINTMENTS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall consult with the Director of Central Intelligence before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy.
- (2) Paragraph (1) applies to the following positions:
- (A) The Director of the Defense Intelligence Agency.
  - (B) The Assistant Secretary of State for Intelligence and Research.
  - (C) The Director of the Office of Intelligence of the Department of Energy.
  - (D) The Director of the Office of Counterintelligence of the Department of Energy.
- (3) In the event of a vacancy in the position of the Assistant Director, National Security Division of the Federal Bureau of Investigation, the Director of the Federal Bureau of Investigation shall provide timely notice to the Director of Central Intelligence of the recommendation of the Director of the Federal Bureau of Investigation of an individual to fill the position in order that the Director of Central Intelligence may consult with the Director of the Federal Bureau of Investigation before the Attorney General appoints an individual to fill the vacancy.

NATIONAL SECURITY RESOURCES BOARD <sup>1</sup>

SEC. 107. [50 U.S.C. 404] (a) The Director of the Office of Defense Mobilization,<sup>2</sup> subject to the direction of the President, is authorized, subject to the civil-service laws and the Classification Act of 1949,<sup>3</sup> to appoint and fix the compensation of such personnel as may be necessary to assist the Director in carrying out his functions.

(b) It shall be the function of the Director of the Office of Defense Mobilization to advise the President concerning the coordination of military, industrial, and civilian mobilization, including—

- (1) policies concerning industrial and civilian mobilization in order to assure the most effective mobilization and maximum utilization of the Nation's manpower in the event of war.
- (2) programs for the effective use in time of war of the Nation's natural and industrial resources for military and civilian needs, for the maintenance and stabilization of the civilian economy in time of war, and for the adjustment of such economy to war needs and conditions;

<sup>1</sup> Section 107 deals with emergency preparedness. Section 50 of the Act of September 3, 1954 (68 Stat. 1244), eliminated former subsection (a), relating to the establishment of the National Security Resources Board, and redesignated former subsections (b)–(d) as subsections (a)–(c). The section heading was not amended accordingly.

<sup>2</sup> The functions of the Director of the Office of Defense Mobilization under this section which previously were transferred to the President, were delegated to the Director of the Federal Emergency Management Agency by section 4–102 of Executive Order No. 12148 (July 20, 1979, 44 F.R. 43239, 50 U.S.C. App. 2251 note).

<sup>3</sup> The Classification Act of 1949 was repealed by the law enacting title 5, United States Code (Public Law 89–544, Sept. 6, 1966, 80 Stat. 378), and its provisions were codified as chapter 51 and chapter 53 of that title.

(3) policies for unifying, in time of war, the activities of Federal agencies and departments engaged in or concerned with production, procurement, distribution, or transportation of military or civilian supplies, materials, and products;

(4) the relationship between potential supplies of, and potential requirements for, manpower, resources, and productive facilities in time of war;

(5) policies for establishing adequate reserves of strategic and critical material, and for the conservation of these reserves;

(6) the strategic relocation of industries, services, government, and economic activities, the continuous operation of which is essential to the Nation's security.

(c) In performing his functions, the Director of the Office of Defense Mobilization shall utilize to the maximum extent the facilities and resources of the departments and agencies of the Government.

#### ANNUAL NATIONAL SECURITY STRATEGY REPORT

SEC. 108. [50 U.S.C. 404a] (a)(1) The President shall transmit to Congress each year a comprehensive report on the national security strategy of the United States (hereinafter in this section referred to as a national security strategy report").

(2) The national security strategy report for any year shall be transmitted on the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31, United States Code.

(3) Not later than 150 days after the date on which a new President takes office, the President shall transmit to Congress a national security strategy report under this section. That report shall be in addition to the report for that year transmitted at the time specified in paragraph (2).

(b) Each national security strategy report shall set forth the national security strategy of the United States and shall include a comprehensive description and discussion of the following:

(1) The worldwide interests, goals, and objectives of the United States that are vital to the national security of the United States.

(2) The foreign policy, worldwide commitments, and national defense capabilities of the United States necessary to deter aggression and to implement the national security strategy of the United States.

(3) The proposed short-term and long-term uses of the political, economic, military, and other elements of the national power of the United States to protect or promote the interests and achieve the goals and objectives referred to in paragraph (1).

(4) The adequacy of the capabilities of the United States to carry out the national security strategy of the United States, including an evaluation of the balance among the capabilities of all elements of the national power of the United States to support the implementation of the national security strategy.

(5) Such other information as may be necessary to help inform Congress on matters relating to the national security strategy of the United States.

(c) Each national security strategy report shall be transmitted in both a classified and an unclassified form.

ANNUAL REPORT ON INTELLIGENCE

SEC. 109. (a) IN GENERAL.—(1)(A) Not later each year than the date provided in section 507, the President shall submit to the congressional intelligence committees a report on the requirements of the United States for intelligence and the activities of the intelligence community.

(B) Not later than January 31 each year, and included with the budget of the President for the next fiscal year under section 1105(a) of title 31, United States Code, the President shall submit to the appropriate congressional committees the report described in subparagraph (A).

(2) The purpose of the report is to facilitate an assessment of the activities of the intelligence community during the preceding fiscal year and to assist in the development of a mission and a budget for the intelligence community for the fiscal year beginning in the year in which the report is submitted.

(3) The report shall be submitted in unclassified form, but may include a classified annex.

(b) MATTERS COVERED.—(1) Each report under subsection (a) shall—

(A) specify the intelligence required to meet the national security interests of the United States, and set forth an order of priority for the collection and analysis of intelligence required to meet such interests, for the fiscal year beginning in the year in which the report is submitted; and

(B) evaluate the performance of the intelligence community in collecting and analyzing intelligence required to meet such interests during the fiscal year ending in the year preceding the year in which the report is submitted, including a description of the significant successes and significant failures of the intelligence community in such collection and analysis during that fiscal year.

(2) The report shall specify matters under paragraph (1)(A) in sufficient detail to assist Congress in making decisions with respect to the allocation of resources for the matters specified.

(c) DEFINITION.—In this section, the term “appropriate congressional committees” means the following:

(1) The Committee on Appropriations and the Committee on Armed Services of the Senate.

(2) The Committee on Appropriations and the Committee on Armed Services of the House of Representatives.

NATIONAL MISSION OF NATIONAL IMAGERY AND MAPPING AGENCY

SEC. 110. [50 U.S.C. 404e] (a) IN GENERAL.—In addition to the Department of Defense missions set forth in section 442 of title 10, United States Code, the National Imagery and Mapping Agency shall support the imagery requirements of the Department of State and other departments and agencies of the United States outside the Department of Defense.

(b) REQUIREMENTS AND PRIORITIES.—The Director of Central Intelligence shall establish requirements and priorities governing

the collection of national intelligence by the National Imagery and Mapping Agency under subsection (a).

(c) CORRECTION OF DEFICIENCIES.—The Director of Central Intelligence shall develop and implement such programs and policies as the Director and the Secretary of Defense jointly determine necessary to review and correct deficiencies identified in the capabilities of the National Imagery and Mapping Agency to accomplish assigned national missions, including support to the all-source analysis and production process. The Director shall consult with the Secretary of Defense on the development and implementation of such programs and policies. The Secretary shall obtain the advice of the Chairman of the Joint Chiefs of Staff regarding the matters on which the Director and the Secretary are to consult under the preceding sentence.

#### COLLECTION TASKING AUTHORITY

SEC. 111. [50 U.S.C. 404f] Unless otherwise directed by the President, the Director of Central Intelligence shall have authority (except as otherwise agreed by the Director and the Secretary of Defense) to—

- (1) approve collection requirements levied on national imagery collection assets;
- (2) determine priorities for such requirements; and
- (3) resolve conflicts in such priorities.

#### RESTRICTIONS ON INTELLIGENCE SHARING WITH THE UNITED NATIONS

SEC. 112. [50 U.S.C. 404g] (a) PROVISION OF INTELLIGENCE INFORMATION TO THE UNITED NATIONS.—(1) No United States intelligence information may be provided to the United Nations or any organization affiliated with the United Nations, or to any officials or employees thereof, unless the President certifies to the appropriate committees of Congress that the Director of Central Intelligence, in consultation with the Secretary of State and the Secretary of Defense, has established and implemented procedures, and has worked with the United Nations to ensure implementation of procedures, for protecting from unauthorized disclosure United States intelligence sources and methods connected to such information.

(2) Paragraph (1) may be waived upon written certification by the President to the appropriate committees of Congress that providing such information to the United Nations or an organization affiliated with the United Nations, or to any officials or employees thereof, is in the national security interests of the United States.

(b) PERIODIC AND SPECIAL REPORTS.—(1) The President shall report semiannually to the appropriate committees of Congress on the types and volume of intelligence provided to the United Nations and the purposes for which it was provided during the period covered by the report. The President shall also report to the appropriate committees of Congress within 15 days after it has become known to the United States Government that there has been an unauthorized disclosure of intelligence provided by the United States to the United Nations.

(2) The requirement for periodic reports under the first sentence of paragraph (1) shall not apply to the provision of intel-

ligence that is provided only to, and for the use of, appropriately cleared United States Government personnel serving with the United Nations.

(3) In the case of periodic reports required to be submitted under the first sentence of paragraph (1) to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 507.

(c) DELEGATION OF DUTIES.—The President may not delegate or assign the duties of the President under this section.

(d) RELATIONSHIP TO EXISTING LAW.—Nothing in this section shall be construed to—

(1) impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(6) of this Act; or

(2) supersede or otherwise affect the provisions of title V of this Act.

(e) DEFINITION.—As used in this section, the term “appropriate committees of Congress” means the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and the Committee on Foreign Relations and the Permanent Select Committee on Intelligence of the House of Representatives.

DETAIL OF INTELLIGENCE COMMUNITY PERSONNEL—INTELLIGENCE  
COMMUNITY ASSIGNMENT PROGRAM

SEC. 113. [50 U.S.C. 404h] (a) DETAIL.—(1) Notwithstanding any other provision of law, the head of a department with an element in the intelligence community or the head of an intelligence community agency or element may detail any employee within that department, agency, or element to serve in any position in the Intelligence Community Assignment Program on a reimbursable or a nonreimbursable basis.

(2) Nonreimbursable details may be for such periods as are agreed to between the heads of the parent and host agencies, up to a maximum of three years, except that such details may be extended for a period not to exceed one year when the heads of the parent and host agencies determine that such extension is in the public interest.

(b) BENEFITS, ALLOWANCES, TRAVEL, INCENTIVES.—(1) An employee detailed under subsection (a) may be authorized any benefit, allowance, travel, or incentive otherwise provided to enhance staffing by the organization from which the employee is detailed.

(2) The head of an agency of an employee detailed under subsection (a) may pay a lodging allowance for the employee subject to the following conditions:

(A) The allowance shall be the lesser of the cost of the lodging or a maximum amount payable for the lodging as established jointly by the Director of Central Intelligence and—

(i) with respect to detailed employees of the Department of Defense, the Secretary of Defense; and

(ii) with respect to detailed employees of other agencies and departments, the head of such agency or department.

(B) The detailed employee maintains a primary residence for the employee's immediate family in the local commuting

area of the parent agency duty station from which the employee regularly commuted to such duty station before the detail.

(C) The lodging is within a reasonable proximity of the host agency duty station.

(D) The distance between the detailed employee's parent agency duty station and the host agency duty station is greater than 20 miles.

(E) The distance between the detailed employee's primary residence and the host agency duty station is 10 miles greater than the distance between such primary residence and the employee's parent duty station.

(F) The rate of pay applicable to the detailed employee does not exceed the rate of basic pay for grade GS-15 of the General Schedule.

ADDITIONAL ANNUAL REPORTS FROM THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 114. [50 U.S.C. 404i] (a) REPORT ON INTELLIGENCE COMMUNITY COOPERATION WITH FEDERAL LAW ENFORCEMENT AGENCIES.—(1) Not later than December 31 of each year, the Director of Central Intelligence shall submit to the congressional leadership a report describing the nature and extent of cooperation and assistance provided by the intelligence community to Federal law enforcement agencies with respect to efforts to stop the illegal importation into the United States of controlled substances (as that term is defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) that are included in schedule I or II under part B of such Act.

(2) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the report required to be submitted under paragraph (1) during the preceding year.

(3) Each such report shall include a discussion of the following:

(A) Illegal importation of such controlled substances through transit zones such as the Caribbean Sea and across the Southwest and northern borders of the United States.

(B) Methodologies used for such illegal importation.

(C) Additional routes used for such illegal importation.

(D) Quantities of such controlled substances transported through each route.

(4) Each such report may be prepared in classified form, unclassified form, or unclassified form with a classified annex.

(b) ANNUAL REPORT ON THE SAFETY AND SECURITY OF RUSSIAN NUCLEAR FACILITIES AND NUCLEAR MILITARY FORCES.—(1) The Director of Central Intelligence shall submit to the congressional leadership on an annual basis, and to the congressional intelligence committees on the date each year provided in section 507, an intelligence report assessing the safety and security of the nuclear facilities and nuclear military forces in Russia.

(2) Each such report shall include a discussion of the following:

(A) The ability of the Government of Russia to maintain its nuclear military forces.

(B) The security arrangements at civilian and military nuclear facilities in Russia.

(C) The reliability of controls and safety systems at civilian nuclear facilities in Russia.

(D) The reliability of command and control systems and procedures of the nuclear military forces in Russia.

(3) Each such report shall be submitted in unclassified form, but may contain a classified annex.

(c) ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES.—(1) The Director of Central Intelligence shall, on an annual basis, submit to Congress a report on the employment of covered persons within each element of the intelligence community for the preceding fiscal year.

(2) Each such report shall include disaggregated data by category of covered person from each element of the intelligence community on the following:

(A) Of all individuals employed in the element during the fiscal year involved, the aggregate percentage of such individuals who are covered persons.

(B) Of all individuals employed in the element during the fiscal year involved at the levels referred to in clauses (i) and (ii), the percentage of covered persons employed at such levels:

(i) Positions at levels 1 through 15 of the General Schedule.

(ii) Positions at levels above GS-15.

(C) Of all individuals hired by the element involved during the fiscal year involved, the percentage of such individuals who are covered persons.

(3) Each such report shall be submitted in unclassified form, but may contain a classified annex.

(4) Nothing in this subsection shall be construed as providing for the substitution of any similar report required under another provision of law.

(5) In this subsection, the term “covered persons” means—

(A) racial and ethnic minorities;

(B) women; and

(C) individuals with disabilities.

(d) ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional committees specified in paragraph (3) a report assessing the following:

(A) The current threat of attack on the United States using ballistic missiles or cruise missiles.

(B) The current threat of attack on the United States using a chemical, biological, or nuclear weapon delivered by a system other than a ballistic missile or cruise missile.

(2) Each report under paragraph (1) shall be a national intelligence estimate, or have the formality of a national intelligence estimate.

(3) The congressional committees referred to in paragraph (1) are the following:

(A) The congressional intelligence committees.

(B) The Committees on Foreign Relations and Armed Services of the Senate.

(C) The Committees on International Relations and Armed Services of the House of Representatives.

(e) ANNUAL REPORT ON COVERT LEASES.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees a report on each covert lease of an element of the intelligence community that is in force as of the end of the preceding year.

(2) Each report under paragraph (1) shall include the following:

(A) A list of each lease described by that paragraph.

(B) For each lease—

(i) the cost of such lease;

(ii) the duration of such lease;

(iii) the purpose of such lease; and

(iv) the directorate or office that controls such lease.

(f) CONGRESSIONAL LEADERSHIP DEFINED.—In this section, the term “congressional leadership” means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.

ANNUAL REPORT ON IMPROVEMENT OF FINANCIAL STATEMENTS FOR  
AUDITING PURPOSES

SEC. 114A. [50 U.S.C. 404i-1] Not later each year than the date provided in section 507, the Director of Central Intelligence, the Director of the National Security Agency, the Director of the Defense Intelligence Agency, and the Director of the National Imagery and Mapping Agency shall each submit to the congressional intelligence committees a report describing the activities being undertaken by such official to ensure that the financial statements of such agency can be audited in accordance with applicable law and requirements of the Office of Management and Budget.

LIMITATION ON ESTABLISHMENT OR OPERATION OF DIPLOMATIC  
INTELLIGENCE SUPPORT CENTERS

SEC. 115. [50 U.S.C. 404j] (a) IN GENERAL.—(1) A diplomatic intelligence support center may not be established, operated, or maintained without the prior approval of the Director of Central Intelligence.

(2) The Director may only approve the establishment, operation, or maintenance of a diplomatic intelligence support center if the Director determines that the establishment, operation, or maintenance of such center is required to provide necessary intelligence support in furtherance of the national security interests of the United States.

(b) PROHIBITION OF USE OF APPROPRIATIONS.—Amounts appropriated pursuant to authorizations by law for intelligence and intelligence-related activities may not be obligated or expended for the establishment, operation, or maintenance of a diplomatic intelligence support center that is not approved by the Director of Central Intelligence.

(c) DEFINITIONS.—In this section:

(1) The term “diplomatic intelligence support center” means an entity to which employees of the various elements of the intelligence community (as defined in section 3(4)) are detailed for the purpose of providing analytical intelligence support that—

- (A) consists of intelligence analyses on military or political matters and expertise to conduct limited assessments and dynamic taskings for a chief of mission; and
- (B) is not intelligence support traditionally provided to a chief of mission by the Director of Central Intelligence.
- (2) The term “chief of mission” has the meaning given that term by section 102(3) of the Foreign Service Act of 1980 (22 U.S.C. 3902(3)), and includes ambassadors at large and ministers of diplomatic missions of the United States, or persons appointed to lead United States offices abroad designated by the Secretary of State as diplomatic in nature.
- (d) TERMINATION.—This section shall cease to be effective on October 1, 2000.

TRAVEL ON ANY COMMON CARRIER FOR CERTAIN INTELLIGENCE  
COLLECTION PERSONNEL

SEC. 116. [50 U.S.C. 404k] (a) IN GENERAL.—Notwithstanding any other provision of law, the Director of Central Intelligence may authorize travel on any common carrier when such travel, in the discretion of the Director—

(1) is consistent with intelligence community mission requirements, or

(2) is required for cover purposes, operational needs, or other exceptional circumstances necessary for the successful performance of an intelligence community mission.

(b) AUTHORIZED DELEGATION OF DUTY.—The Director may only delegate the authority granted by this section to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency the Director may delegate such authority to the Deputy Director for Operations.

POW/MIA ANALYTIC CAPABILITY

SEC. 117. [50 U.S.C. 404l] (a) REQUIREMENT.—(1) The Director of Central Intelligence shall, in consultation with the Secretary of Defense, establish and maintain in the intelligence community an analytic capability with responsibility for intelligence in support of the activities of the United States relating to individuals who, after December 31, 1990, are unaccounted for United States personnel.

(2) The analytic capability maintained under paragraph (1) shall be known as the “POW/MIA analytic capability of the intelligence community”.

(b) UNACCOUNTED FOR UNITED STATES PERSONNEL.—In this section, the term “unaccounted for United States personnel” means the following:

(1) Any missing person (as that term is defined in section 1513(1) of title 10, United States Code).

(2) Any United States national who was killed while engaged in activities on behalf of the United States and whose remains have not been repatriated to the United States.

SEMIANNUAL REPORT ON FINANCIAL INTELLIGENCE ON TERRORIST  
ASSETS

SEC. 118. [50 U.S.C. 404m] (a) SEMIANNUAL REPORT.—On a semiannual basis, the Secretary of the Treasury (acting through

the head of the Office of Intelligence Support) shall submit a report to the appropriate congressional committees that fully informs the committees concerning operations against terrorist financial networks. Each such report shall include with respect to the preceding six-month period—

(1) the total number of asset seizures, designations, and other actions against individuals or entities found to have engaged in financial support of terrorism;

(2) the total number of applications for asset seizure and designations of individuals or entities suspected of having engaged in financial support of terrorist activities that were granted, modified, or denied;

(3) the total number of physical searches of offices, residences, or financial records of individuals or entities suspected of having engaged in financial support for terrorist activity; and

(4) whether the financial intelligence information seized in these cases has been shared on a full and timely basis with the all departments, agencies, and other entities of the United States Government involved in intelligence activities participating in the Foreign Terrorist Asset Tracking Center.

(b) IMMEDIATE NOTIFICATION FOR EMERGENCY DESIGNATION.—In the case of a designation of an individual or entity, or the assets of an individual or entity, as having been found to have engaged in terrorist activities, the Secretary of the Treasury shall report such designation within 24 hours of such a designation to the appropriate congressional committees.

(c) SUBMITTAL DATE OF REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of the reports required to be submitted under subsection (a) to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 507.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means the following:

(1) The Permanent Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Financial Services of the House of Representatives.

(2) The Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

## TITLE II—THE DEPARTMENT OF DEFENSE

SEC. 201. [Subsections (a) and (b) were repealed by section 307 of Public Law 87-651 (Act of September 7, 1962, 76 Stat. 526). Subsection (c) consisted of an amendment to another Act.]

(d) [50 U.S.C. 408] Except to the extent inconsistent with the provisions of this Act, the provisions of title IV of the Revised Statutes<sup>1</sup> as now or hereafter amended shall be applicable to the Department of Defense.

<sup>1</sup>Title IV of the Revised Statutes consisted of sections 158-198 of the Revised Statutes. Sections 176 and 193 are codified as sections 492-1 and 492-2 of title 31, United States Code. The remainder of those sections have been repealed or replaced by provisions of title 5, United States Code, as enacted. See the “Tables” volume of the United States Code for the distribution of specific sections.

[Sections 202–204 were repealed by section 307 of Public Law 87–651 (Act of September 7, 1962, 76 Stat. 526).]

DEPARTMENT OF THE ARMY

SEC. 205. [Subsections (a), (d), and (e) were repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676)].

(b) All laws, orders, regulations, and other actions relating to the Department of War or to any officer or activity whose title is changed under this section shall, insofar as they are not inconsistent with the provisions of this Act, be deemed to relate to the Department of the Army within the Department of Defense or to such officer or activity designated by his or its new title.

(c) [50 U.S.C. 409(a)] the term “Department of the Army” as used in this Act shall be construed to mean the Department of the Army at the seat of government and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Department of the Army.

DEPARTMENT OF THE NAVY

SEC. 206. (a) [50 U.S.C. 409(b)] The term “Department of the Navy” as used in this Act shall be construed to mean the Department of the Navy at the seat of government; the headquarters, United States Marine Corps; the entire operating forces of the United States Navy, including naval aviation, and of the United States Marine Corps, including the reserve components of such forces; all field activities, headquarters, forces, bases, installations, activities and functions under the control or supervision of the Department of the Navy; and the United States Coast Guard when operating as a part of the Navy pursuant to law.

[Subsections (b) and (c) were repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676)].

DEPARTMENT OF THE AIR FORCE

SEC. 207. [Subsections (a), (b), (d), (e), and (f) were repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A stat. 676)].

(c) [50 U.S.C. 409(c)] The term “Department of the Air Force” as used in this Act shall be construed to mean the Department of the Air Force at the seat of government and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Department of the Air Force.

[Section 208 (less subsection (c)) was repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676). Section 208(c) was repealed by the law enacting title 5, United States Code (Public Law 89–544, September 6, 1966, 80 Stat. 654).]

[Sections 209–214 were repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676).]

## TITLE III—MISCELLANEOUS

## NATIONAL SECURITY AGENCY VOLUNTARY SEPARATION

SEC. 301. [50 U.S.C. 409a] (a) SHORT TITLE.—This section may be cited as the “National Security Agency Voluntary Separation Act”.

(b) DEFINITIONS.—For purposes of this section—

(1) the term “Director” means the Director of the National Security Agency; and

(2) the term “employee” means an employee of the National Security Agency, serving under an appointment without time limitation, who has been currently employed by the National Security Agency for a continuous period of at least 12 months prior to the effective date of the program established under subsection (c), except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system for employees of the Government; or

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A).

(c) ESTABLISHMENT OF PROGRAM.—Notwithstanding any other provision of law, the Director, in his sole discretion, may establish a program under which employees may, after October 1, 2000, be eligible for early retirement, offered separation pay to separate from service voluntarily, or both.

(d) EARLY RETIREMENT.—An employee who—

(1) is at least 50 years of age and has completed 20 years of service; or

(2) has at least 25 years of service,  
may, pursuant to regulations promulgated under this section, apply and be retired from the National Security Agency and receive benefits in accordance with chapter 83 or 84 of title 5, United States Code, if the employee has not less than 10 years of service with the National Security Agency.

(e) AMOUNT OF SEPARATION PAY AND TREATMENT FOR OTHER PURPOSES.—

(1) AMOUNT.—Separation pay shall be paid in a lump sum and shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code, if the employee were entitled to payment under such section; or

(B) \$25,000.

(2) TREATMENT.—Separation pay shall not—

(A) be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(B) be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(f) REEMPLOYMENT RESTRICTIONS.—An employee who receives separation pay under such program may not be reemployed by the National Security Agency for the 12-month period beginning on the effective date of the employee's separation. An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103-236; 108 Stat. 111) and accepts employment with the Government of the United States within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the National Security Agency. If the employment is with an Executive agency (as defined by section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(g) BAR ON CERTAIN EMPLOYMENT.—

(1) BAR.—An employee may not be separated from service under this section unless the employee agrees that the employee will not—

(A) act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to the National Security Agency; or

(B) participate in any manner in the award, modification, or extension of any contract for property or services with the National Security Agency, during the 12-month period beginning on the effective date of the employee's separation from service.

(2) PENALTY.—An employee who violates an agreement under this subsection shall be liable to the United States in the amount of the separation pay paid to the employee pursuant to this section multiplied by the proportion of the 12-month period during which the employee was in violation of the agreement.

(h) LIMITATIONS.—Under this program, early retirement and separation pay may be offered only—

(1) with the prior approval of the Director;

(2) for the period specified by the Director; and

(3) to employees within such occupational groups or geographic locations, or subject to such other similar limitations or conditions, as the Director may require.

(i) REGULATIONS.—Before an employee may be eligible for early retirement, separation pay, or both, under this section, the Director

shall prescribe such regulations as may be necessary to carry out this section.

(j) NOTIFICATION OF EXERCISE OF AUTHORITY.—The Director may<sup>1</sup> not make an offer of early retirement, separation pay, or both, pursuant to this section until 15 days after submitting to the congressional intelligence committees a report describing the occupational groups or geographic locations, or other similar limitations or conditions, required by the Director under subsection (h), and includes the proposed regulations issued pursuant to subsection (i).

(k) REMITTANCE OF FUNDS.—In addition to any other payment that is required to be made under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, the National Security Agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund, an amount equal to 15 percent of the final basic pay of each employee to whom a voluntary separation payment has been or is to be paid under this section. The remittance required by this subsection shall be in lieu of any remittance required by section 4(a) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 8331 note).

[Section 302 was repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676).]

#### ADVISORY COMMITTEES AND PERSONNEL

SEC. 303. [50 U.S.C. 405] (a) The Director of the Office of Defense Mobilization, the Director of Central Intelligence, and the National Security Council, acting through its Executive Secretary, are authorized to appoint such advisory committees and to employ, consistent with other provisions of this Act, such part-time advisory personnel as they may deem necessary in carrying out their respective functions and the functions of agencies under their control. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such service. Retired members of the uniformed services employed by the Director of Central Intelligence who hold no other office or position under the United States for which they receive compensation, other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a daily rate not to exceed the daily equivalent of the rate of pay in effect for grade GS-18 of the General Schedule established by section 5332 of title 5, United States Code, as determined by the appointing authority.

(b) Service of an individual as a member of any such advisory committee, or in any other part-time capacity for a department or agency hereunder, shall not be considered as service bringing such individual within the provisions of section 203, 205, or 207, of title 18, United States Code, unless the act of such individual, which by such section is made unlawful when performed by an individual referred to in such section, is with respect to any particular matter

<sup>1</sup>Section 941(b)(1) of the Intelligence Authorization Act for Fiscal Year 2003 (P.L. 107-306; 116 Stat. 2431) amended this subsection by striking “REPORTING REQUIREMENTS.—” and all that follows through ‘The Director may’ and inserting ‘NOTIFICATION OF EXERCISE OF AUTHORITY.—The Director may’. There was no hyphen in law within the word “Requirements”. The amendment has been executed to reflect the probable intent of Congress

which directly involves a department or agency which such person is advising or in which such department or agency is directly interested.

[Sections 304–306 were repealed by the law enacting title 5, United States Code (Public Law 89–544, September 6, 1966, 80 Stat. 654).]

#### AUTHORIZATION FOR APPROPRIATIONS

SEC. 307. [50 U.S.C. 411] There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act (other than the provisions and purposes of sections 102, 103, 104, 105 and titles V, VI, and VII).

#### DEFINITIONS

SEC. 308. [50 U.S.C. 410] (a)<sup>1</sup> As used in this Act, the term “function” includes functions, powers, and duties.

(b) As used in this Act, the term, “Department of Defense” shall be deemed to include the military departments of the Army, the Navy, and the Air Force, and all agencies created under title II of this Act.

#### SEPARABILITY

SEC. 309. [50 U.S.C. 401 note] If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

#### EFFECTIVE DATE

SEC. 310. [50 U.S.C. 401 note] (a) The first sentence of section 202 (a) and sections 1, 2, 307, 308, 309, and 310 shall take effect immediately upon the enactment of this Act.

(b) Except as provided in subsection (a), the provisions of this Act shall take effect on whichever of the following days is the earlier: The day after the day upon which the Secretary of Defense first appointed takes office, or the sixtieth day after the date of the enactment of this Act.

#### SUCCESSION TO THE PRESIDENCY

SEC. 311. [Section 311 consisted of an amendment to the Act entitled “An Act to provide for the performance of the duties of the office of President in case of the removal, resignation, death, or inability both of the President and Vice President”.]

[Title IV *less* section 411 was repealed by section 307 of Public Law 87–651 (Act of September 7, 1962, 76 Stat. 526).]

<sup>1</sup>Section 307 of Public Law 87–651 (Act of September 7, 1962, 76 Stat. 526) repealed section 308(a) *less* its applicability to sections 2, 101–103, and 303.

## REPEALING AND SAVING PROVISIONS

SEC. 411. [50 U.S.C. 412] All laws, orders, and regulations inconsistent with the provisions of this title are repealed insofar as they are inconsistent with the powers, duties, and responsibilities enacted hereby: *Provided*, That the powers, duties, and responsibilities of the Secretary of Defense under this title shall be administered in conformance with the policy and requirements for administration of budgetary and fiscal matters in the Government generally, including accounting and financial reporting, and that nothing in this title shall be construed as eliminating or modifying the powers, duties, and responsibilities of any other department, agency, or officer of the Government in connection with such matters, but no such department, agency, or officer shall exercise any such powers, duties, or responsibilities in a manner that will render ineffective the provisions of this title.

TITLE V—ACCOUNTABILITY FOR INTELLIGENCE  
ACTIVITIES<sup>1</sup>

## GENERAL CONGRESSIONAL OVERSIGHT PROVISIONS

SEC. 501. [50 U.S.C. 413] (a)(1) The President shall ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity as required by this title.

(2) Nothing in this title shall be construed as requiring the approval of the congressional intelligence committees as a condition precedent to the initiation of any significant anticipated intelligence activity.

(b) The President shall ensure that any illegal intelligence activity is reported promptly to the congressional intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity.

(c) The President and the congressional intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of this title.

(d) The House of Representatives and the Senate shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information, and all information relating to intelligence sources and methods, that is furnished to the congressional intelligence committees or to Members of Congress under this title. Such procedures shall be established in consultation with the Director of Central Intelligence. In accordance with such procedures, each of the congressional intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) Nothing in this Act shall be construed as authority to withhold information from the congressional intelligence committees on the grounds that providing the information to the congressional intelligence committees would constitute the unauthorized disclosure

<sup>1</sup> This title is also set out *post* at page 711 along with other materials relating to congressional oversight of intelligence activities.

of classified information or information relating to intelligence sources and methods.

(f) As used in this section, the term "intelligence activities" includes covert actions as defined in section 503(e), and includes financial intelligence activities.

REPORTING OF INTELLIGENCE ACTIVITIES OTHER THAN COVERT  
ACTIONS

SEC. 502. [50 U.S.C. 413a] (a) IN GENERAL.—To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—

(1) keep the congressional intelligence committees fully and currently informed of all intelligence activities, other than a covert action (as defined in section 503(e)), which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity and any significant intelligence failure; and

(2) furnish the congressional intelligence committees any information or material concerning intelligence activities, other than covert actions, which is within their custody or control, and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.

(b) FORM AND CONTENTS OF CERTAIN REPORTS.—Any report relating to a significant anticipated intelligence activity or a significant intelligence failure that is submitted to the congressional intelligence committees for purposes of subsection (a)(1) shall be in writing, and shall contain the following:

(1) A concise statement of any facts pertinent to such report.

(2) An explanation of the significance of the intelligence activity or intelligence failure covered by such report.

(c) STANDARDS AND PROCEDURES FOR CERTAIN REPORTS.—The Director of Central Intelligence, in consultation with the heads of the departments, agencies, and entities referred to in subsection (a), shall establish standards and procedures applicable to reports covered by subsection (b).

PRESIDENTIAL APPROVAL AND REPORTING OF COVERT ACTIONS

SEC. 503. [50 U.S.C. 413b] (a) The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government unless the President determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions:

(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit

the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than 48 hours after the decision is made.

(2) Except as permitted by paragraph (1), a finding may not authorize or sanction a covert action, or any aspect of any such action, which already has occurred.

(3) Each finding shall specify each department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such action. Any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a covert action shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency, or entity, to govern such participation.

(4) Each finding shall specify whether it is contemplated that any third party which is not an element of, or a contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action concerned on behalf of the United States.

(5) A finding may not authorize any action that would violate the Constitution or any statute of the United States.

(b) To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and entities of the United States Government involved in a covert action—

(1) shall keep the congressional intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including significant failures; and

(2) shall furnish to the congressional intelligence committees any information or material concerning covert actions which is in the possession, custody, or control of any department, agency, or entity of the United States Government and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.

(c)(1) The President shall ensure that any finding approved pursuant to subsection (a) shall be reported to the congressional intelligence committees as soon as possible after such approval and before the initiation of the covert action authorized by the finding, except as otherwise provided in paragraph (2) and paragraph (3).

(2) If the President determines that it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, the finding may be reported to the chairmen and ranking minority members of the congressional intelligence committees, the Speaker and minority leader of the

House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President.

(3) Whenever a finding is not reported pursuant to paragraph (1) or (2) of this section, the President shall fully inform the congressional intelligence committees in a timely fashion and shall provide a statement of the reasons for not giving prior notice.

(4) In a case under paragraph (1), (2), or (3), a copy of the finding, signed by the President, shall be provided to the chairman of each congressional intelligence committee. When access to a finding is limited to the Members of Congress specified in paragraph (2), a statement of the reasons for limiting such access shall also be provided.

(d) The President shall ensure that the congressional intelligence committees, or, if applicable, the Members of Congress specified in subsection (c)(2), are notified of any significant change in a previously approved covert action, or any significant undertaking pursuant to a previously approved finding, in the same manner as findings are reported pursuant to subsection (c).

(e) As used in this title, the term "covert action" means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include—

(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

(2) traditional diplomatic or military activities or routine support to such activities;

(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

(4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.

(f) No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

#### FUNDING OF INTELLIGENCE ACTIVITIES

SEC. 504. [50 U.S.C. 414] (a) Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 503 of this Act concerning any significant anticipated intelligence activity, the Director of Central Intelligence has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

- (A) the activity to be funded is a higher priority intelligence or intelligence-related activity;
- (B) the need for funds for such activity is based on unforeseen requirements; and
- (C) the Director of Central Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;
- (4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.
- (b) Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.
- (c) No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 503(e), unless and until a Presidential finding required by subsection (a) of section 503 has been signed or otherwise issued in accordance with that subsection.
- (d)(1) Except as otherwise specifically provided by law, funds available to an intelligence agency that are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if those funds are used for activities reported to the appropriate congressional committees pursuant to procedures which identify—
- (A) the types of activities for which nonappropriated funds may be expended; and
- (B) the circumstances under which an activity must be reported as a significant anticipated intelligence activity before such funds can be expended.
- (2) Procedures for purposes of paragraph (1) shall be jointly agreed upon by the congressional intelligence committees and, as appropriate, the Director of Central Intelligence or the Secretary of Defense.
- (e) As used in this section—
- (1) the term “intelligence agency” means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;
- (2) the term “appropriate congressional committees” means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate; and
- (3) the term “specifically authorized by the Congress” means that—
- (A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.

NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES  
AND DEFENSE SERVICES

SEC. 505. [50 U.S.C. 415] (a)(1) The transfer of a defense article or defense service, or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services, exceeding \$1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of this title.

(2) Paragraph (1) does not apply if—

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(a) of that title), or the Federal Property and Administrative Services Act of 1949, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(b) As used in this section—

(1) the term “intelligence agency” means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the terms “defense articles” and “defense services” mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

(3) the term “transfer” means—

(A) in the case of defense articles, the transfer of possession of those articles; and

(B) in the case of defense services, the provision of those services; and

(4) the term “value” means—

(A) in the case of defense articles, the greater of—

(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

(ii) the replacement cost; and

(B) in the case of defense services, the full cost to the Government of providing the services.

SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE

SEC. 506. (a) **[50 U.S.C. 415a]** IN GENERAL.—The budget justification materials submitted to Congress in support of the budget of the President for a fiscal year that is submitted to Congress under section 1105(a) of title 31, United States Code, shall set forth separately the aggregate amount requested for that fiscal year for the National Foreign Intelligence Program for each of the following:

- (1) Counterterrorism.
- (2) Counterproliferation.
- (3) Counternarcotics.
- (4) Counterintelligence.

(b) ELECTION OF CLASSIFIED OR UNCLASSIFIED FORM.—Amounts set forth under subsection (a) may be set forth in unclassified form or classified form, at the election of the Director of Central Intelligence.

DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMI-ANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES

SEC. 507. **[50 U.S.C. 415b]** (a) ANNUAL REPORTS.—(1) The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1)(A):

(A) The annual evaluation of the performance and responsiveness of certain elements of the intelligence community required by section 105(d).

(B) The annual report on intelligence required by section 109.

(C) The annual report on intelligence community cooperation with Federal law enforcement agencies required by section 114(a)(2).

(D) The annual report on the protection of the identities of covert agents required by section 603.

(E) The annual report of the Inspectors General of the intelligence community on proposed resources and activities of their offices required by section 8H(g) of the Inspector General Act of 1978.

(F) The annual report on commercial activities as security for intelligence collection required by section 437(c) of title 10, United States Code.

(G) The annual report on expenditures for postemployment assistance for terminated intelligence employees required by section 1611(e)(2) of title 10, United States Code.

(H) The annual update on foreign industrial espionage required by section 809(b) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103-359; 50 U.S.C. App. 2170b(b)).

(I) The annual report on coordination of counterintelligence matters with the Federal Bureau of Investigation required by section 811(c)(6) of the Counterintelligence and Security Enhancements Act of 1994 (50 U.S.C. 402a(c)(6)).

(J) The annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds

in the United States capital markets required by section 827 of the Intelligence Authorization Act for Fiscal Year 2003.

(K) The annual report on certifications for immunity in interdiction of aircraft engaged in illicit drug trafficking required by section 1012(c)(2) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291-4(c)(2)).

(L) The annual report on exceptions to consumer disclosure requirements for national security investigations under section 604(b)(4)(E) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)(E)).

(M) The annual report on activities under the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102-183; 50 U.S.C. 1901 et seq.) required by section 806(a) of that Act (50 U.S.C. 1906(a)).

(N) The annual report on hiring and retention of minority employees in the intelligence community required by section 114(c).

(2) The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1)(B):

(A) The annual report on the safety and security of Russian nuclear facilities and nuclear military forces required by section 114(b).

(B) The annual report on the threat of attack on the United States from weapons of mass destruction required by section 114(d).

(C) The annual report on covert leases required by section 114(e).

(D) The annual report on improvements of the financial statements of the intelligence community for auditing purposes required by section 114A.

(E) The annual report on activities of personnel of the Federal Bureau of Investigation outside the United States required by section 540C(c)(2) of title 28, United States Code.

(F) The annual report on intelligence activities of the People's Republic of China required by section 308(c) of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105-107; 50 U.S.C. 402a note).

(G) The annual report on counterdrug intelligence matters required by section 826 of the Intelligence Authorization Act for Fiscal Year 2003.

(b) SEMIANNUAL REPORTS.—The dates for the submittal to the congressional intelligence committees of the following semiannual reports shall be the dates each year provided in subsection (c)(2):

(1) The periodic reports on intelligence provided to the United Nations required by section 112(b).

(2) The semiannual reports on the Office of the Inspector General of the Central Intelligence Agency required by section 17(d)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(1)).

(3) The semiannual reports on decisions not to prosecute certain violations of law under the Classified Information Procedures Act (18 U.S.C. App.) as required by section 13 of that Act.

(4) The semiannual reports on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions required by section 721(b) of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104-293; 50 U.S.C. 2366(b)).

(5) The semiannual reports on the activities of the Diplomatic Telecommunications Service Program Office (DTS-PO) required by section 322(a)(6)(D)(ii) of the Intelligence Authorization Act for Fiscal Year 2001 (22 U.S.C. 7302(a)(6)(D)(ii)).

(6) The semiannual reports on the disclosure of information and consumer reports to the Federal Bureau of Investigation for counterintelligence purposes required by section 624(h)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681u(h)(2)).

(7) The semiannual provision of information on requests for financial information for foreign counterintelligence purposes required by section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)).

(8) The semiannual report on financial intelligence on terrorist assets required by section 118.

(c) SUBMITTAL DATES FOR REPORTS.—(1)(A) Except as provided in subsection (d), each annual report listed in subsection (a)(1) shall be submitted not later than February 1.

(B) Except as provided in subsection (d), each annual report listed in subsection (a)(2) shall be submitted not later than December 1.

(2) Except as provided in subsection (d), each semiannual report listed in subsection (b) shall be submitted not later than February 1 and August 1.

(d) POSTPONEMENT OF SUBMITTAL.—(1) Subject to paragraph (3), the date for the submittal of—

(A) an annual report listed in subsection (a)(1) may be postponed until March 1;

(B) an annual report listed in subsection (a)(2) may be postponed until January 1; and

(C) a semiannual report listed in subsection (b) may be postponed until March 1 or September 1, as the case may be, if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

(2)(A) Notwithstanding any other provision of law and subject to paragraph (3), the date for the submittal to the congressional intelligence committees of any report described in subparagraph (B) may be postponed by not more than 30 days from the date otherwise specified in the provision of law for the submittal of such report if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

(B) A report described in this subparagraph is any report on intelligence or intelligence-related activities of the United States Government that is submitted under a provision of law requiring the submittal of only a single report.

(3)(A) The date for the submittal of a report whose submittal is postponed under paragraph (1) or (2) may be postponed beyond the time provided for the submittal of such report under such para-

graph if the official required to submit such report submits to the congressional intelligence committees a written certification that preparation and submittal of such report at such time will impede the work of officers or employees of the intelligence community in a manner that will be detrimental to the national security of the United States.

(B) A certification with respect to a report under subparagraph (A) shall include a proposed submittal date for such report, and such report shall be submitted not later than that date.

#### TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

##### PROTECTION OF IDENTITIES OF CERTAIN UNITED STATES UNDERCOVER INTELLIGENCE OFFICERS, AGENTS, INFORMANTS, AND SOURCES

SEC. 601. [50 U.S.C. 421] (a) Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined under title 18, United States Code, or imprisoned not more than ten years, or both.

(b) Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined under title 18, United States Code, or imprisoned not more than three years, or both.

(d) A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.

##### DEFENSES AND EXCEPTIONS

SEC. 602. [50 U.S.C. 422] (a) It is a defense to a prosecution under section 601 that before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

(b)(1) Subject to paragraph (2), no person other than a person committing an offense under section 601 shall be subject to prosecution under such section by virtue of section 2 or 4 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such section.

(2) Paragraph (1) shall not apply (A) in the case of a person who acted in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, or (B) in the case of a person who has authorized access to classified information.

(c) It shall not be an offense under section 601 to transmit information described in such section directly to either congressional intelligence committee.

(d) It shall not be an offense under section 601 for an individual to disclose information that solely identifies himself as a covert agent.

#### REPORT

**SEC. 603. [50 U.S.C. 423]** (a) The President, after receiving information from the Director of Central Intelligence, shall submit to the congressional intelligence committees an annual report on measures to protect the identities of covert agents, and on any other matter relevant to the protection of the identities of covert agents. The date for the submittal of the report shall be the date provided in section 507.

(b) The report described in subsection (a) shall be exempt from any requirement for publication or disclosure.

#### EXTRATERRITORIAL JURISDICTION

**SEC. 604. [50 U.S.C. 424]** There is jurisdiction over an offense under section 601 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).

#### PROVIDING INFORMATION TO CONGRESS

**SEC. 605. [50 U.S.C. 425]** Nothing in this title may be construed as authority to withhold information from the Congress or from a committee of either House of Congress.

#### DEFINITIONS

**SEC. 606. [50 U.S.C. 426]** For the purposes of this title:

(1) The term “classified information” means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

(2) The term “authorized”, when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive

order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

(3) The term “disclose” means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

(4) The term “covert agent” means—

(A) a present or retired officer or employee of an intelligence agency or a present or retired member of the Armed Forces assigned to duty with an intelligence agency—

(i) whose identity as such an officer, employee, or member is classified information, and

(ii) who is serving outside the United States or has within the last five years served outside the United States; or

(B) a United States citizen whose intelligence relationship to the United States is classified information, and—

(i) who resides and acts outside the United States as an agent of, or informant or source of operational assistance to, an intelligence agency, or

(ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or

(C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified information and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.

(5) The term “intelligence agency” means the Central Intelligence Agency, a foreign intelligence component of the Department of Defense, or the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation.

(6) The term “informant” means any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.

(7) The terms “officer” and “employee” have the meanings given such terms by section 2104 and 2105, respectively, of title 5, United States Code.

(8) The term “Armed Forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(9) The term “United States”, when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(10) The term “pattern of activities” requires a series of acts with a common purpose or objective.

TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE  
CENTRAL INTELLIGENCE AGENCY

EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW,  
PUBLICATION, OR DISCLOSURE

SEC. 701. [50 U.S.C. 431] (a) Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence from the provisions of section 552 of title 5, United States Code (Freedom of Information Act), which require publication or disclosure, or search or review in connection therewith.

(b) For the purposes of this title the term “operational files” means—

(1) files of the Directorate of Operations which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services;

(2) files of the Directorate for Science and Technology which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; and

(3) files of the Office of Personnel Security which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; except that files which are the sole repository of disseminated intelligence are not operational files.

(c) Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning—

(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 of title 5, United States Code (Freedom of Information Act), or section 552a of title 5, United States Code (Privacy Act of 1974);

(2) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code (Freedom of Information Act); or

(3) the specific subject matter of an investigation by the congressional intelligence committees, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of Central Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

(d)(1) Files that are not exempted under subsection (a) of this section which contain information derived or disseminated from exempted operational files shall be subject to search and review.

(2) The inclusion of information from exempted operational files in files that are not exempted under subsection (a) of this section shall not affect the exemption under subsection (a) of this section of the originating operational files from search, review, publication, or disclosure.

(3) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under subsection (a) of this section and which have been returned to exempted operational files for sole retention shall be subject to search and review.

(e) The provisions of subsection (a) of this section shall not be superseded except by a provision of law which is enacted after the date of enactment of subsection (a), and which specifically cites and repeals or modifies its provisions.

(f) Whenever any person who has requested agency records under section 552 of title 5, United States Code (Freedom of Information Act), alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code, except that—

(1) in any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign relations which is filed with, or produced for, the court by the Central Intelligence Agency, such information shall be examined *ex parte*, in camera by the court;

(2) the court shall, to the fullest extent practicable, determine issues of fact based on sworn written submissions of the parties;

(3) when a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission, based upon personal knowledge or otherwise admissible evidence;

(4)(A) when a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Central Intelligence Agency shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records currently perform the functions set forth in subsection (b) of this section; and

(B) the court may not order the Central Intelligence Agency to review the content of any exempted operational file or files in order to make the demonstration required under subparagraph (A) of this paragraph, unless the complainant disputes the Central Intelligence Agency's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence;

(5) in proceedings under paragraphs (3) and (4) of this subsection, the parties shall not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admission may be made pursuant to rules 26 and 36;

(6) if the court finds under this subsection that the Central Intelligence Agency has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Central Intelligence Agency to search and review the appropriate exempted operational file or files

for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code (Freedom of Information Act), and such order shall be the exclusive remedy for failure to comply with this section; and

(7) if at any time following the filing of a complaint pursuant to this subsection the Central Intelligence Agency agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

#### DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES

SEC. 702. [50 U.S.C. 432] (a) Not less than once every ten years, the Director of Central Intelligence shall review the exemptions in force under subsection (a) of section 701 of this Act to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

(b) The review required by subsection (a) of this section shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(c) A complainant who alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with this section may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining (1) whether the Central Intelligence Agency has conducted the review required by subsection (a) of this section within ten years of enactment of this title or within ten years after the last review, and (2) whether the Central Intelligence Agency, in fact, considered the criteria set forth in subsection (b) of this section in conducting the required review.

### TITLE VIII—ACCESS TO CLASSIFIED INFORMATION

#### PROCEDURES

SEC. 801. [50 U.S.C. 435] (a) Not later than 180 days after the date of enactment of this title, the President shall, by Executive order or regulation, establish procedures to govern access to classified information which shall be binding upon all departments, agencies, and offices of the executive branch of Government. Such procedures shall, at a minimum—

(1) provide that, except as may be permitted by the President, no employee in the executive branch of Government may be given access to classified information by any department, agency, or office of the executive branch of Government unless, based upon an appropriate background investigation, such access is determined to be clearly consistent with the national security interests of the United States;

(2) establish uniform minimum requirements governing the scope and frequency of background investigations and re-investigations for all employees in the executive branch of Gov-

ernment who require access to classified information as part of their official responsibilities;

(3) provide that all employees in the executive branch of Government who require access to classified information shall be required as a condition of such access to provide to the employing department or agency written consent which permits access by an authorized investigative agency to relevant financial records, other financial information, consumer reports, travel records, and computers used in the performance of Government duties, as determined by the President, in accordance with section 802 of this title, during the period of access to classified information and for a period of three years thereafter;

(4) provide that all employees in the executive branch of Government who require access to particularly sensitive classified information, as determined by the President, shall be required, as a condition of maintaining access to such information, to submit to the employing department or agency, during the period of such access, relevant information concerning their financial condition and foreign travel, as determined by the President, as may be necessary to ensure appropriate security; and

(5) establish uniform minimum standards to ensure that employees in the executive branch of Government whose access to classified information is being denied or terminated under this title are appropriately advised of the reasons for such denial or termination and are provided an adequate opportunity to respond to all adverse information which forms the basis for such denial or termination before final action by the department or agency concerned.

(b)(1) Subsection (a) shall not be deemed to limit or affect the responsibility and power of an agency head pursuant to other law or Executive order to deny or terminate access to classified information if the national security so requires. Such responsibility and power may be exercised only when the agency head determines that the procedures prescribed by subsection (a) cannot be invoked in a manner that is consistent with the national security.

(2) Upon the exercise of such responsibility, the agency head shall submit a report to the congressional intelligence committees.

#### REQUESTS BY AUTHORIZED INVESTIGATIVE AGENCIES

SEC. 802. [50 U.S.C. 436] (a)(1) Any authorized investigative agency may request from any financial agency, financial institution, or holding company, or from any consumer reporting agency, such financial records, other financial information, and consumer reports as may be necessary in order to conduct any authorized law enforcement investigation, counterintelligence inquiry, or security determination. Any authorized investigative agency may also request records maintained by any commercial entity within the United States pertaining to travel by an employee in the executive branch of Government outside the United States.

(2) Requests may be made under this section where—

(A) the records sought pertain to a person who is or was an employee in the executive branch of Government required by the President in an Executive order or regulation, as a con-

dition of access to classified information, to provide consent, during a background investigation and for such time as access to the information is maintained, and for a period of not more than three years thereafter, permitting access to financial records, other financial information, consumer reports, and travel records; and

(B)(i) there are reasonable grounds to believe, based on credible information, that the person is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(ii) information the employing agency deems credible indicates the person has incurred excessive indebtedness or has acquired a level of affluence which cannot be explained by other information known to the agency; or

(iii) circumstances indicate the person had the capability and opportunity to disclose classified information which is known to have been lost or compromised to a foreign power or an agent of a foreign power.

(3) Each such request—

(A) shall be accompanied by a written certification signed by the department or agency head or deputy department or agency head concerned, or by a senior official designated for this purpose by the department or agency head concerned (whose rank shall be no lower than Assistant Secretary or Assistant Director), and shall certify that—

(i) the person concerned is or was an employee within the meaning of paragraph (2)(A);

(ii) the request is being made pursuant to an authorized inquiry or investigation and is authorized under this section; and

(iii) the records or information to be reviewed are records or information which the employee has previously agreed to make available to the authorized investigative agency for review;

(B) shall contain a copy of the agreement referred to in subparagraph (A)(iii);

(C) shall identify specifically or by category the records or information to be reviewed; and

(D) shall inform the recipient of the request of the prohibition described in subsection (b).

(b) Notwithstanding any other provision of law, no governmental or private entity, or officer, employee, or agent of such entity, may disclose to any person, other than those officers, employees, or agents of such entity necessary to satisfy a request made under this section, that such entity has received or satisfied a request made by an authorized investigative agency under this section.

(c)(1) Notwithstanding any other provision of law (other than section 6103 of the Internal Revenue Code of 1986), an entity receiving a request for records or information under subsection (a) shall, if the request satisfies the requirements of this section, make available such records or information within 30 days for inspection or copying, as may be appropriate, by the agency requesting such records or information.

(2) Any entity (including any officer, employee, or agent thereof) that discloses records or information for inspection or copying

pursuant to this section in good faith reliance upon the certifications made by an agency pursuant to this section shall not be liable for any such disclosure to any person under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(d) Any agency requesting records or information under this section may, subject to the availability of appropriations, reimburse a private entity for any cost reasonably incurred by such entity in responding to such request, including the cost of identifying, reproducing, or transporting records or other data.

(e) An agency receiving records or information pursuant to a request under this section may disseminate the records or information obtained pursuant to such request outside the agency only—

(1) to the agency employing the employee who is the subject of the records or information;

(2) to the Department of Justice for law enforcement or counterintelligence purposes; or

(3) with respect to dissemination to an agency of the United States, if such information is clearly relevant to the authorized responsibilities of such agency.

(f) Nothing in this section may be construed to affect the authority of an investigative agency to obtain information pursuant to the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

#### EXCEPTIONS

SEC. 803. [50 U.S.C. 437] Except as otherwise specifically provided, the provisions of this title shall not apply to the President and Vice President, Members of the Congress, Justices of the Supreme Court, and Federal judges appointed by the President.

#### DEFINITIONS

SEC. 804. [50 U.S.C. 438] For purposes of this title—

(1) the term “authorized investigative agency” means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigations of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information;

(2) the term “classified information” means any information that has been determined pursuant to Executive Order No. 12356 of April 2, 1982, or successor orders, or the Atomic Energy Act of 1954, to require protection against unauthorized disclosure and that is so designated;

(3) the term “consumer reporting agency” has the meaning given such term in section 603 of the Consumer Credit Protection Act (15 U.S.C. 1681a);

(4) the term “employee” includes any person who receives a salary or compensation of any kind from the United States Government, is a contractor of the United States Government or an employee thereof, is an unpaid consultant of the United States Government, or otherwise acts for or on behalf of the United States Government, except as otherwise determined by the President;

(5) the terms “financial agency” and “financial institution” have the meanings given to such terms in section 5312(a) of title 31, United States Code, and the term “holding company” has the meaning given to such term in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401);

(6) the terms “foreign power” and “agent of a foreign power” have the same meanings as set forth in sections 101 (a) and (b), respectively, of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(7) the term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, and any other possession of the United States; and

(8) the term “computer” means any electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device and any data or other information stored or contained in such device.

#### TITLE IX—APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES

##### STAY OF SANCTIONS

SEC. 901. [50 U.S.C. 441] Notwithstanding any provision of law identified in section 904, the President may stay the imposition of an economic, cultural, diplomatic, or other sanction or related action by the United States Government concerning a foreign country, organization, or person when the President determines and reports to Congress in accordance with section 903 that to proceed without delay would seriously risk the compromise of an ongoing criminal investigation directly related to the activities giving rise to the sanction or an intelligence source or method directly related to the activities giving rise to the sanction. Any such stay shall be effective for a period of time specified by the President, which period may not exceed 120 days, unless such period is extended in accordance with section 902.

##### EXTENSION OF STAY

SEC. 902. [50 U.S.C. 441a] Whenever the President determines and reports to Congress in accordance with section 903 that a stay of sanctions or related actions pursuant to section 901 has not afforded sufficient time to obviate the risk to an ongoing criminal investigation or to an intelligence source or method that gave rise to the stay, he may extend such stay for a period of time specified by the President, which period may not exceed 120 days. The authority of this section may be used to extend the period of a stay pursuant to section 901 for successive periods of not more than 120 days each.

## REPORTS

SEC. 903. [50 U.S.C. 441b] Reports to Congress pursuant to sections 901 and 902 shall be submitted promptly upon determinations under this title. Such reports shall be submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. With respect to determinations relating to intelligence sources and methods, reports shall also be submitted to the congressional intelligence committees. With respect to determinations relating to ongoing criminal investigations, reports shall also be submitted to the Committees on the Judiciary of the House of Representatives and the Senate.

## LAWS SUBJECT TO STAY

SEC. 904. [50 U.S.C. 441c] The President may use the authority of sections 901 and 902 to stay the imposition of an economic, cultural, diplomatic, or other sanction or related action by the United States Government related to the proliferation of weapons of mass destruction, their delivery systems, or advanced conventional weapons otherwise required to be imposed by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III of Public Law 102-182); the Nuclear Proliferation Prevention Act of 1994 (title VIII of Public Law 103-236); title XVII of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) (relating to the nonproliferation of missile technology); the Iran-Iraq Arms Nonproliferation Act of 1992 (title XVI of Public Law 102-484); section 573 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1994 (Public Law 103-87); section 563 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1995 (Public Law 103-306); and comparable provisions.

## APPLICATION

SEC. 905. [50 U.S.C. 441d] This title shall cease to be effective on January 6, 2000.

## TITLE X—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

## SCHOLARSHIPS AND WORK-STUDY FOR PURSUIT OF GRADUATE DEGREES IN SCIENCE AND TECHNOLOGY

SEC. 1001. [50 U.S.C. 441g] (a) PROGRAM AUTHORIZED.—The Director of Central Intelligence may carry out a program to provide scholarships and work-study for individuals who are pursuing graduate degrees in fields of study in science and technology that are identified by the Director as appropriate to meet the future needs of the intelligence community for qualified scientists and engineers.

(b) ADMINISTRATION.—If the Director carries out the program under subsection (a), the Director shall administer the program through the Assistant Director of Central Intelligence for Administration.

(c) IDENTIFICATION OF FIELDS OF STUDY.—If the Director carries out the program under subsection (a), the Director shall iden-

tify fields of study under subsection (a) in consultation with the other heads of the elements of the intelligence community.

(d) ELIGIBILITY FOR PARTICIPATION.—An individual eligible to participate in the program is any individual who—

(1) either—

(A) is an employee of the intelligence community; or

(B) meets criteria for eligibility for employment in the intelligence community that are established by the Director;

(2) is accepted in a graduate degree program in a field of study in science or technology identified under subsection (a); and

(3) is eligible for a security clearance at the level of Secret or above.

(e) REGULATIONS.—If the Director carries out the program under subsection (a), the Director shall prescribe regulations for purposes of the administration of this section.

#### TITLE XI—ADDITIONAL MISCELLANEOUS PROVISIONS

##### APPLICABILITY TO UNITED STATES INTELLIGENCE ACTIVITIES OF FEDERAL LAWS IMPLEMENTING INTERNATIONAL TREATIES AND AGREEMENTS

SEC. 1101. [50 U.S.C. 442] (a) IN GENERAL.—No Federal law enacted on or after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2001 that implements a treaty or other international agreement shall be construed as making unlawful an otherwise lawful and authorized intelligence activity of the United States Government or its employees, or any other person to the extent such other person is carrying out such activity on behalf of, and at the direction of, the United States, unless such Federal law specifically addresses such intelligence activity.

(b) AUTHORIZED INTELLIGENCE ACTIVITIES.—An intelligence activity shall be treated as authorized for purposes of subsection (a) if the intelligence activity is authorized by an appropriate official of the United States Government, acting within the scope of the official duties of that official and in compliance with Federal law and any applicable Presidential directive.

## CENTRAL INTELLIGENCE AGENCY ACT OF 1949

(Chapter 227; 63 Stat. 208; approved June 20, 1949)

AN ACT To provide for the administration of the Central Intelligence Agency, established pursuant to section 102, National Security Act of 1947, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### DEFINITIONS

SECTION 1. [50 U.S.C. 403a] That when used in this Act, the term—

- (a) “Agency” means the Central Intelligence Agency;
- (b) “Director” means the Director of Central Intelligence;
- (c) “Government agency” means any executive department, commission, council, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government.

### SEAL OF OFFICE

SEC. 2. [50 U.S.C. 403b] The Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency, of such design as the President shall approve, and judicial notice shall be taken thereof.

### PROCUREMENT AUTHORITIES

SEC. 3. [50 U.S.C. 403c] (a) In the performance of its functions the Central Intelligence Agency is authorized to exercise the authorities contained in sections 2(c) (1), (2), (3), (4), (5), (6), (10), (12), (15), (17), and sections 3, 4, 5, 6, and 10 of the Armed Services Procurement Act of 1947<sup>1</sup> (Public Law 413, Eightieth Congress, second session).

(b) In the exercise of the authorities granted in subsection (a) of this section, the term “Agency head” shall mean the Director, the Deputy Director, or the Executive of the Agency.

(c) The determinations and decisions provided in subsection (a) of this section to be made by the Agency head may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final. Except as pro-

<sup>1</sup>The Armed Services Procurement Act of 1947 was repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 1). The cited sections were replaced by sections 2304(a) (1)–(6), (10), (12), (15), and (17), 2305 (a)–(c), 2306, 2307, 2308, 2309, 2312, and 2313 of title 10. Section 49(b) of that Act provided: “References that other laws, regulations, and orders make to the replaced law shall be considered to be made to the corresponding provisions of [the sections enacting titles 10 and 32].”

vided in subsection (d) of this section, the Agency head is authorized to delegate his powers provided in this section, including the making of such determinations and decisions, in his discretion and subject to his direction, to any other officer or officers or officials of the Agency.

(d) The power of the Agency head to make the determinations or decisions specified in paragraphs (12) and (15) of section 2(c) and section 5(a) of the Armed Services Procurement Act of 1947<sup>1</sup> shall not be delegable. Each determination or decision required by paragraphs (12) and (15) of section 2(c), by section 4 or by section 5(a) of the Armed Services Procurement Act of 1947,<sup>1</sup> shall be based upon written findings made by the official making such determinations, which findings shall be final and shall be available within the Agency for a period of at least six years following the date of the determination.

【Original section 4 (50 U.S.C. 403d) was repealed by section 21(b)(2) of Public Law 85-507 (72 Stat. 337, July 7, 1958).】

#### TRAVEL, ALLOWANCES, AND RELATED EXPENSES

SEC. 4. 【50 U.S.C. 403e】 (a) Under such regulations as the Director may prescribe, the Agency, with respect to its officers and employees assigned to duty stations outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, shall—

(1)(A) pay the travel expenses of officers and employees of the Agency, including expenses incurred while traveling pursuant to authorized home leave;

(B) pay the travel expenses of members of the family of an officer or employee of the Agency when proceeding to or returning from his post of duty; accompanying him on authorized home leave; or otherwise traveling in accordance with authority granted pursuant to the terms of this or any other Act;

(C) pay the cost of transporting the furniture and household and personal effects of an officer or employee of the Agency to his successive posts of duty and, on the termination of his services, to his residence at time of appointment or to a point not more distant, or, upon retirement, to the place where he will reside;

(D) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Agency, when he is absent from his post of assignment under orders, or when he is assigned to a post to which he cannot take or at which he is unable to use such furniture and household and personal effects, or when it is in the public interest or more economical to authorize storage; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations, when not otherwise fixed by law;

(E) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and

<sup>1</sup>See footnote on previous page. The cited provisions were replaced by paragraphs (12) and (15) of section 2304(a) and section 2307(a) of title 10.

household and personal effects of an officer or employee of the Agency in connection with assignment or transfer to a new post, from the date of his departure from his last post or from the date of his departure from his place of residence in the case of a new officer or employee and for not to exceed three months after arrival at the new post, or until the establishment of residence quarters, whichever shall be shorter; and in connection with separation of an officer or employee of the Agency, the cost of packing and unpacking, transporting to and from a place of storage, and storing for a period not to exceed three months, his furniture and household and personal effects; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations, when not otherwise fixed by law.<sup>1</sup>

(F) pay the travel expenses and transportation costs incident to the removal of the members of the family of an officer or employee of the Agency and his furniture and household and personal effects, including automobiles, from a post at which, because of the prevalence of disturbed conditions, there is imminent danger to life and property, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned.

(2) Charge expenses in connection with travel of personnel, their dependents, and transportation of their household goods and personal effects, involving a change of permanent station, to the appropriation for the fiscal year current when any part of either the travel or transportation pertaining to the transfer begins pursuant to previously issued travel and transfer orders, notwithstanding the fact that such travel or transportation may not all be effected during such fiscal year, or the travel and transfer orders may have been issued during the prior fiscal year.

(3)(A) Order to any of the several States of the United States of America (including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States) on leave of absence each officer or employee of the Agency who was a resident of the United States (as described above) at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter.

(B) While in the United States (as described in paragraph (3)(A) of this section) on leave, the service of any officer or employee shall be available for work or duties in the Agency or elsewhere as the Director may prescribe; and the time of such work or duty shall not be counted as leave.

(C) Where an officer or employee on leave returns to the United States (as described in paragraph (3)(A) of this section), leave of absence granted shall be exclusive of the time actually and necessarily occupied in going to and from the United

<sup>1</sup> So in original. The period probably should be a semicolon.

States (as so described) and such time as may be necessarily occupied in awaiting transportation.

(4) Notwithstanding the provisions of any other law, transport for or on behalf of an officer or employee of the Agency, a privately owned motor vehicle in any case in which it shall be determined that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, and pay the costs of such transportation. Not more than one motor vehicle of any officer or employee of the Agency may be transported under authority of this paragraph during any four-year period, except that, as replacement for such motor vehicle, one additional motor vehicle of any such officer or employee may be so transported during such period upon approval, in advance, by the Director and upon a determination, in advance, by the Director that such replacement is necessary for reasons beyond the control of the officer or employee and is in the interest of the Government. After the expiration of a period of four years following the date of transportation under authority of this paragraph of a privately owned motor vehicle of any officer or employee who has remained in continuous service outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, during such period, the transportation of a replacement for such motor vehicle for such officer or employee may be authorized by the Director in accordance with this paragraph.

(5)(A) In the event of illness or injury requiring the hospitalization of an officer or full time employee of the Agency, incurred while on assignment abroad, in a locality where there does not exist a suitable hospital or clinic, pay the travel expenses of such officer or employee by whatever means the Director deems appropriate and without regard to the Standardized Government Travel Regulations and section 5731 of title 5, United States Code, to the nearest locality where a suitable hospital or clinic exists and on the recovery of such officer or employee pay for the travel expenses of the return to the post of duty of such officer or employee of duty. If the officer or employee is too ill to travel unattended, the Director may also pay the travel expenses of an attendant;

(B) Establish a first-aid station and provide for the services of a nurse at a post at which, in the opinion of the Director, sufficient personnel is employed to warrant such a station: *Provided*, That, in the opinion of the Director, it is not feasible to utilize an existing facility;

(C) In the event of illness or injury requiring hospitalization of an officer or full time employee of the Agency incurred in the line of duty while such person is assigned abroad, pay for the cost of the treatment of such illness or injury at a suitable hospital or clinic;

(D) Provide for the periodic physical examination of officers and employees of the Agency and for the cost of administering inoculations or vaccinations to such officers or employees.

(6) Pay the costs of preparing and transporting the remains of an officer or employee of the Agency or a member of

his family who may die while in travel status or abroad, to his home or official station, or to such other place as the Director may determine to be the appropriate place of interment, provided that in no case shall the expense payable be greater than the amount which would have been payable had the destination been the home or official station.

(7) Pay the costs of travel of new appointees and their dependents, and the transportation of their household goods and personal effects, from places of actual residence in foreign countries at time of appointment to places of employment and return to their actual residences at the time of appointment or a point not more distant: *Provided*, That such appointees agree in writing to remain with the United States Government for a period of not less than twelve months from the time of appointment.

Violation of such agreement for personal convenience of an employee or because of separation for misconduct will bar such return payments and, if determined by the Director or his designee to be in the best interests of the United States, any money expended by the United States on account of such travel and transportation shall be considered as a debt due by the individual concerned to the United States.

(b)(1) The Director may pay to officers and employees of the Agency, and to persons detailed or assigned to the Agency from other agencies of the Government or from the Armed Forces, allowances and benefits comparable to the allowances and benefits authorized to be paid to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4081 et seq.) or any other provision of law.

(2) The Director may pay allowances and benefits related to officially authorized travel, personnel and physical security activities, operational activities, and cover-related activities (whether or not such allowances and benefits are otherwise authorized under this section or any other provision of law) when payment of such allowances and benefits is necessary to meet the special requirements of work related to such activities. Payment of allowances and benefits under this paragraph shall be in accordance with regulations prescribed by the Director. Rates for allowances and benefits under this paragraph may not be set at rates in excess of those authorized by section 5724 and 5724a of title 5, United States Code, when reimbursement is provided for relocation attributable, in whole or in part, to relocation within the United States.

(3) Notwithstanding any other provision of this section or any other provision of law relating to the officially authorized travel of Government employees, the Director, in order to reflect Agency requirements not taken into account in the formulation of Government-wide travel procedures, may by regulation—

(A) authorize the travel of officers and employees of the Agency, and of persons detailed or assigned to the Agency from other agencies of the Government or from the Armed Forces who are engaged in the performance of intelligence functions, and

(B) provide for payment for such travel, in classes of cases, as determined by the Director, in which such travel is important to the performance of intelligence functions.

(4) Members of the Armed Forces may not receive benefits under both this section and title 37, United States Code, for the same purpose. The Director and Secretary of Defense shall prescribe joint regulations to carry out the preceding sentence.

(5) Regulations issued pursuant to this subsection shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate before such regulations take effect.

#### GENERAL AUTHORITIES

SEC. 5. [50 U.S.C. 403f] (a) IN GENERAL.—In the performance of its functions, the Central Intelligence Agency is authorized to—

(1) Transfer to and receive from other Government agencies such sums as may be approved by the Office of Management and Budget, for the performance of any of the functions or activities authorized under paragraphs (2) and (3) of section 102(a), subsections (c)(6) and (d) of section 103, subsections (a) and (g) of section 104, and section 303 of the National Security Act of 1947 (50 U.S.C. 403(a)(2), (3), 403–3(c)(6), (d), 403–4(a), (g), and 405), and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of this Act without regard to limitations of appropriations from which transferred;

(2) Exchange funds without regard to section 3651 Revised Statutes (31 U.S.C. 543);

(3) Reimburse other Government agencies for services of personnel assigned to the Agency, and such other Government agencies are hereby authorized, without regard to provisions of law to the contrary, so to assign or detail any officer or employee for duty with the Agency;

(4) Authorize personnel designated by the Director to carry firearms to the extent necessary for the performance of the Agency's authorized functions, except that, within the United States, such authority shall be limited to the purposes of protection of classified materials and information, the training of Agency personnel and other authorized persons in the use of firearms, the protection of Agency installations and property, and the protection of current and former Agency personnel and their immediate families, defectors and their immediate families, and other persons in the United States under Agency auspices;

(5) Make alterations, improvements, and repairs on premises rented by the Agency, and pay rent therefor;

(6) Determine and fix the minimum and maximum limits of age within which an original appointment may be made to an operational position within the Agency, notwithstanding the provision of any other law, in accordance with such criteria as the Director, in his discretion, may prescribe; and

(7) Notwithstanding section 1341(a)(1) of title 31, United States Code, enter into multiyear leases for up to 15 years.

(b) SCOPE OF AUTHORITY FOR EXPENDITURE.—(1) The authority to enter into a multiyear lease under subsection (a)(7) shall be subject to appropriations provided in advance for—

- (A) the entire lease; or
  - (B) the first 12 months of the lease and the Government's estimated termination liability.
- (2) In the case of any such lease entered into under subparagraph (B) of paragraph (1)—
- (A) such lease shall include a clause that provides that the contract shall be terminated if budget authority (as defined by section 3(2) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 622(2))) is not provided specifically for that project in an appropriations Act in advance of an obligation of funds in respect thereto;
  - (B) notwithstanding section 1552 of title 31, United States Code, amounts obligated for paying termination costs with respect to such lease shall remain available until the costs associated with termination of such lease are paid;
  - (C) funds available for termination liability shall remain available to satisfy rental obligations with respect to such lease in subsequent fiscal years in the event such lease is not terminated early, but only to the extent those funds are in excess of the amount of termination liability at the time of their use to satisfy such rental obligations; and
  - (D) funds appropriated for a fiscal year may be used to make payments on such lease, for a maximum of 12 months, beginning any time during such fiscal year.
- (c) TRANSFERS FOR ACQUISITION OF LAND.—(1) Sums appropriated or otherwise made available to the Agency for the acquisition of land that are transferred to another department or agency for that purpose shall remain available for 3 years.
- (2) The Director shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives a report on the transfer of sums described in paragraph (1) each time that authority is exercised.

SEC. 6. [50 U.S.C. 403g] In the interests of the security of the foreign intelligence activities of the United States and in order further to implement section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403-3(c)(6)) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of sections 1 and 2, chapter 795 of the Act of August 28, 1935<sup>1</sup> (49 Stat. 956, 957; 5 U.S.C. 654), and the provisions of any other laws which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: *Provided*, That in furtherance of this section, the Director of the Office of Management and Budget shall make no reports to the Congress in connection with the Agency under section 607, title VI, chapter 212 of the Act of June 30, 1945, as amended<sup>1</sup> (5 U.S.C. 947(b)).

SEC. 7. [50 U.S.C. 403h] Whenever the Director, the Attorney General and the Commissioner of Immigration shall determine that the admission of a particular alien into the United States for

<sup>1</sup>The cited Act of August 28, 1935, was repealed by the Independent Offices Appropriation Act, 1961 (Public Law 86-626, 74 Stat. 427).

<sup>1</sup>Section 607 of the Act of June 30, 1945, was repealed by section 301(85) of the Budget and Accounting Procedures Act of 1950 (64 Stat. 843).

permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be admitted to the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations, or to the failure to comply with such laws and regulations pertaining to admissibility: *Provided*, That the number of aliens and members of their immediate families admitted to the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year.

#### APPROPRIATIONS

SEC. 8. [50 U.S.C. 403j] (a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; health-service program as authorized by law (5 U.S.C. 150);<sup>2</sup> rental of news-reporting services; purchase or rental and operation of photographic, reproduction, cryptographic, duplication and printing machines, equipment and devices, and radio-receiving and radio-sending equipment and devices, including telegraph and teletype equipment; purchase, maintenance, operation, repair, and hire of passenger motor vehicles, and aircraft, and vessels of all kinds; subject to policies established by the Director, transportation of officers and employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment, where such personnel are engaged in work which makes such transportation necessary, and transportation in such equipment, to and from school, of children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is not available; printing and binding; purchase, maintenance, and cleaning of firearms, including purchase, storage, and maintenance of ammunition; subject to policies established by the Director, expenses of travel in connection with, and expenses incident to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit in the conduct of the work of the Agency; association and library dues; payment of premiums or costs of surety bonds for officers or employees without regard to the provisions of 61 Stat. 646; 6 U.S.C. 14;<sup>1</sup> payment of claims pursuant to 28 U.S.C.; acquisition of necessary land and the clearing of such land; construction of buildings and facilities without regard to 36 Stat. 699; 40 U.S.C. 259, 267;<sup>2</sup> re-

<sup>2</sup>The law codified to section 150 of title 5 before the enactment of that title was replaced by section 7901 of title 5 upon the enactment of that title by Public Law 89-544 (Sept. 6, 1966, 80 Stat. 378).

<sup>1</sup>Section 14 of title 6, United States Code, relating to the purchase of bonds to cover Government employees, was repealed by section 203(1) of Public Law 92-310 (Act of June 6, 1972, 86 Stat. 202).

<sup>2</sup>Section 3734 of the Revised Statutes of the United States, formerly classified to sections 259 and 267 of title 40, was repealed by section 17(12) of the Public Buildings Act of 1959 (Public

pair, rental, operation, and maintenance of buildings, utilities, facilities, and appurtenances; and

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

[Original section 9 (50 U.S.C. 403i) was repealed by section 601(b) of Public Law 763, 68 Stat. 1115; September 1, 1954.]

#### SEPARABILITY OF PROVISIONS

SEC. 9. [50 U.S.C. 403a note] If any provision of this Act, or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than these as to which it is held invalid, shall not be affected thereby.

#### SHORT TITLE

SEC. 10. [50 U.S.C. 401 note] This Act may be cited as the "Central Intelligence Agency Act of 1949".

#### AUTHORITY TO PAY DEATH GRATUITIES

SEC. 11. [50 U.S.C. 403k] (a)(1) The Director may pay a gratuity to the surviving dependents of any officer or employee of the Agency who dies as a result of injuries (other than from disease) sustained outside the United States and whose death—

(A) resulted from hostile or terrorist activities; or

(B) occurred in connection with an intelligence activity having a substantial element of risk.

(2) The provisions of this subsection shall apply with respect to deaths occurring after June 30, 1974.

(b) Any payment under subsection (a)—

(1) shall be in an amount equal to the amount of the annual salary of the officer or employee concerned at the time of death;

(2) shall be considered a gift and shall be in lieu of payment of any lesser death gratuity authorized by any other Federal law; and

(3) shall be made under the same conditions as apply to payments authorized by section 14 of the Act of August 1, 1956 (22 U.S.C. 2679a).<sup>1</sup>

Law 86-249, 73 Stat. 485). That Act is shown in the United States Code as chapter 12 of title 40 (40 U.S.C. 601 et seq.).

<sup>1</sup> Section 14 of the Act of August 1, 1956, was repealed effective February 15, 1981, by section 2205(10) of the Foreign Service Act of 1980 (Public Law 96-465, 94 Stat. 2160. The subject of death gratuities for Foreign Service employees is now covered by section 413 of that Act (22 U.S.C. 3973; 94 Stat. 2092). Section 2401(c) of that Act (94 Stat. 2168) provided: "References in law to provisions of the Foreign Service Act of 1946 or other law superseded by that Act shall be deemed to include reference to the corresponding provisions of this Act."

## AUTHORITY TO ACCEPT GIFTS, DEVISES, AND BEQUESTS

SEC. 12. [50 U.S.C. 4031] (a) Subject to the provisions of this section, the Director may accept, hold, administer, and use gifts of money, securities, or other property whenever the Director determines it would be in the interest of the United States to do so. Any gift accepted under this section (and any income produced by any such gift) may be used only for artistic display or for purposes relating to the general welfare, education, or recreation of employees or dependents of employees of the Agency or for similar purposes, and under no circumstances may such a gift (or any income produced by any such gift) be used for operational purposes. The Director may not accept any gift under this section which is expressly conditioned upon any expenditure not to be met from the gift itself or from income produced by the gift unless such expenditure has been authorized by law.

(b) Unless otherwise restricted by the terms of the gift, the Director may sell or exchange, or invest or reinvest, any property which is accepted under this section, but any such investment may only be in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(c) There is hereby created on the books of the Treasury of the United States a fund into which gifts of money, securities, and other intangible property accepted under the authority of this section, and the earnings and proceeds thereof, shall be deposited. The assets of such fund shall be disbursed upon the order of the Director for the purposes specified in subsection (a) or (b).

(d) For purposes of Federal income, estate, and gift taxes, gifts accepted by the Director under this section shall be considered to be to or for the use of the United States.

(e) For the purposes of this section, the term "gift" includes a bequest or devise.

## MISUSE OF AGENCY NAME, INITIALS OR SEAL

SEC. 13. [50 U.S.C. 403m] (a) No person may, except with the written permission of the Director, knowingly use the words "Central Intelligence Agency", the initials "CIA", the seal of the Central Intelligence Agency, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Central Intelligence Agency.

(b) Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

## RETIREMENT EQUITY FOR SPOUSES OF CERTAIN EMPLOYEES

SEC. 14. [50 U.S.C. 403n] (a) The provisions of sections 102, 221(b) (1)–(3), 221(f), 221(g), 221(h)(2), 221(i), 221(l), 222, 223, 224, 225, 232(b), 241(b), 241(d), and 264(b) of the Central Intelligence Agency Retirement Act (50 U.S.C. 403 note) establishing certain requirements, limitations, rights, entitlements, and benefits relating to retirement annuities, survivor benefits, and lump-sum payments for a spouse or former spouse of an Agency employee who is a participant in the Central Intelligence Agency Retirement and Disability System shall apply in the same manner and to the same extent in the case of an Agency employee who is a participant in the Civil Service Retirement and Disability System.

(b) The Director of the Office of Personnel Management, in consultation with the Director of Central Intelligence, shall prescribe such regulations as may be necessary to implement the provisions of this section.

## SECURITY PERSONNEL AT AGENCY INSTALLATIONS

SEC. 15. [50 U.S.C. 403o] (a)(1) The Director may authorize Agency personnel within the United States to perform the same functions as special policemen of the General Services Administration perform under the first section of the Act entitled “An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes” (40 U.S.C. 318), with the powers set forth in that section, except that such personnel shall perform such functions and exercise such powers—

(A) within the Agency Headquarters Compound and the property controlled and occupied by the Federal Highway Administration located immediately adjacent to such Compound;

(B) in the streets, sidewalks, and the open areas within the zone beginning at the outside boundary of such Compound and property and extending outward 500 feet;

(C) within any other Agency installation and protected property; and

(D) in the streets, sidewalks, and open areas within the zone beginning at the outside boundary of any installation or property referred to in subparagraph (C) and extending outward 500 feet.

(2) The performance of functions and exercise of powers under subparagraph (B) or (D) of paragraph (1) shall be limited to those circumstances where such personnel can identify specific and articulable facts giving such personnel reason to believe that the performance of such functions and exercise of such powers is reasonable to protect against physical damage or injury, or threats of physical damage or injury, to Agency installations, property, or employees.

(3) Nothing in this subsection shall be construed to preclude, or limit in any way, the authority of any Federal, State, or local law enforcement agency, or any other Federal police or Federal protective service.

(4) The rules and regulations enforced by such personnel shall be the rules and regulations prescribed by the Director and shall

only be applicable to the areas referred to in subparagraph (A) or (C) of paragraph (1).

(b) The Director is authorized to establish penalties for violations of the rules or regulations promulgated by the Director under subsection (a) of this section. Such penalties shall not exceed those specified in the fourth section of the Act referred to in subsection (a) of this section (40 U.S.C. 318c).

(c) Agency personnel designated by the Director under subsection (a) of this section shall be clearly identifiable as United States Government security personnel while engaged in the performance of the functions to which subsection (a) of this section refers.

HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL  
INTELLIGENCE AGENCY EMPLOYEES

SEC. 16. [50 U.S.C. 403p] (a) Except as provided in subsection (e), any individual—

(1) formerly married to an employee or former employee of the Agency, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(2) who, at any time during the eighteen-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

(3) who was married to such employee for not less than ten years during periods of service by such employee with the Agency, at least five years of which were spent outside the United States by both the employee and the former spouse, is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the six-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code, an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

(2) The Director of Central Intelligence shall, as soon as possible, take all steps practicable—

(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

(B) to notify each such former spouse of that individual's rights under this section.

(3) The Director of the Office of Personnel Management, upon notification by the Director of Central Intelligence, shall waive the six-month limitation set forth in paragraph (1) in any case in which the Director of Central Intelligence determines that the circumstances so warrant.

(c) ELIGIBILITY OF FORMER WIVES OR HUSBANDS.—(1) Notwithstanding subsections (a) and (b) and except as provided in subsections (d), (e), and (f), an individual—

(A) who was divorced on or before December 4, 1991, from a participant or retired participant in the Central Intelligence Agency Retirement and Disability System or the Federal Employees Retirement System Special Category;

(B) who was married to such participant for not less than ten years during the participant's creditable service, at least five years of which were spent by the participant during the participant's service as an employee of the Agency outside the United States, or otherwise in a position the duties of which qualified the participant for designation by the Director of Central Intelligence as a participant under section 203 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2013); and

(C) who was enrolled in a health benefits plan as a family member at any time during the 18-month period before the date of dissolution of the marriage to such participant;

is eligible for coverage under a health benefits plan.

(2) A former spouse eligible for coverage under paragraph (1) may enroll in a health benefits plan in accordance with subsection (b)(1), except that the election for such enrollment must be submitted within 60 days after the date on which the Director notifies the former spouse of such individual's eligibility for health insurance coverage under this subsection.

(d) CONTINUATION OF ELIGIBILITY.—Notwithstanding subsections (a), (b), and (c) and except as provided in subsections (e) and (f), an individual divorced on or before December 4, 1991, from a participant or retired participant in the Central Intelligence Agency Retirement and Disability System or Federal Employees' Retirement System Special Category who enrolled in a health benefits plan following the dissolution of the marriage to such participant may continue enrollment following the death of such participant notwithstanding the termination of the retirement annuity of such individual.

(e)(1) Any former spouse who remarries before age fifty-five is not eligible to make an election under subsection (b)(1).

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) or to subsection (d) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age fifty-five shall not be eligible for continued enrollment under this section after the end of the thirty-one-day period beginning on the date of remarriage.

(3)(A) A former spouse who is not eligible to enroll or to continue enrollment in a health benefits plan under this section solely because of remarriage before age fifty-five shall be restored to such eligibility on the date such remarriage is dissolved by death, annulment, or divorce.

(B) A former spouse whose eligibility is restored under subparagraph (A) may, under regulations which the Director of the Office of Personnel Management shall prescribe, enroll in a health benefits plan if such former spouse—

(i) was an individual referred to in paragraph (1) and was an individual covered under a benefits plan as a family member at any time during the 18-month period before the date of dissolution of the marriage to the Agency employee or annuitant; or

(ii) was an individual referred to in paragraph (2) and was an individual covered under a benefits plan immediately before the remarriage ended the enrollment.

(f) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

(g) For purposes of this section the term "health benefits plan" means an approved health benefits plan under chapter 89 of title 5, United States Code.

**SEC. 17. [50 U.S.C. 403q] INSPECTOR GENERAL FOR THE AGENCY.**

(a) PURPOSE; ESTABLISHMENT.—In order to—

(1) create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independently inspections, investigations, and audits relating to programs and operations of the Agency;

(2) provide leadership and recommend policies designed to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and detect fraud and abuse in such programs and operations;

(3) provide a means for keeping the Director fully and currently informed about problems and deficiencies relating to the administration of such programs and operations, and the necessity for and the progress of corrective actions; and

(4) in the manner prescribed by this section, ensure that the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence (hereafter in this section referred to collectively as the "intelligence committees") are kept similarly informed of significant problems and deficiencies as well as the necessity for and the progress of corrective actions,

there is hereby established in the Agency an Office of Inspector General (hereafter in this section referred to as the "Office").

(b) APPOINTMENT; SUPERVISION; REMOVAL.—(1) There shall be at the head of the Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate. This appointment shall be made without regard to political affiliation and shall be solely on the basis of integrity, compliance with the security standards of the Agency, and prior experience in the field of foreign intelligence. Such appointment shall also be made on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or auditing.

(2) The Inspector General shall report directly to and be under the general supervision of the Director.

(3) The Director may prohibit the Inspector General from initiating, carrying out, or completing any audit, inspection, or investigation if the Director determines that such prohibition is nec-

essary to protect vital national security interests of the United States.

(4) If the Director exercises any power under paragraph (3), he shall submit an appropriately classified statement of the reasons for the exercise of such power within seven days to the intelligence committees. The Director shall advise the Inspector General at the time such report is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of any such report. In such cases, the Inspector General may submit such comments to the intelligence committees that he considers appropriate.

(5) In accordance with section 535 of title 28, United States Code, the Inspector General shall report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involve a program or operation of the Agency, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of all such reports shall be furnished to the Director.

(6) The Inspector General may be removed from office only by the President. The President shall immediately communicate in writing to the intelligence committees the reasons for any such removal.

(c) DUTIES AND RESPONSIBILITIES.—It shall be the duty and responsibility of the Inspector General appointed under this section—

(1) to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the inspections, investigations, and audits relating to the programs and operations of the Agency to ensure they are conducted efficiently and in accordance with applicable law and regulations;

(2) to keep the Director fully and currently informed concerning violations of law and regulations, fraud and other serious problems, abuses and deficiencies that may occur in such programs and operations, and to report the progress made in implementing corrective action;

(3) to take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Office, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

(4) in the execution of his responsibilities, to comply with generally accepted government auditing standards.

(d) SEMIANNUAL REPORTS; IMMEDIATE REPORTS OF SERIOUS OR FLAGRANT PROBLEMS; REPORTS OF FUNCTIONAL PROBLEMS; REPORTS TO CONGRESS ON URGENT CONCERNS.—(1) The Inspector General shall, not later than January 31 and July 31 of each year, prepare and submit to the Director of Central Intelligence a classified semiannual report summarizing the activities of the Office during the immediately preceding six-month periods ending December 31 (of the preceding year) and June 30, respectively. Not later than the dates each year provided for the transmittal of such reports in section 507 of the National Security Act of 1947, the Director shall transmit such reports to the intelligence committees with any comments he may deem appropriate. Such reports shall, at a min-

imum, include a list of the title or subject of each inspection, investigation, or audit conducted during the reporting period and—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Agency identified by the Office during the reporting period;

(B) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified in subparagraph (A);

(C) a statement of whether corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action;

(D) a certification that the Inspector General has had full and direct access to all information relevant to the performance of his functions;

(E) a description of the exercise of the subpoena authority under subsection (e)(5) by the Inspector General during the reporting period; and

(F) such recommendations as the Inspector General may wish to make concerning legislation to promote economy and efficiency in the administration of programs and operations undertaken by the Agency, and to detect and eliminate fraud and abuse in such programs and operations.

(2) The Inspector General shall report immediately to the Director whenever he becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs or operations. The Director shall transmit such report to the intelligence committees within seven calendar days, together with any comments he considers appropriate.

(3) In the event that—

(A) the Inspector General is unable to resolve any differences with the Director affecting the execution of the Inspector General's duties or responsibilities;

(B) an investigation, inspection, or audit carried out by the Inspector General should focus on any current or former Agency official who—

(i) holds or held a position in the Agency that is subject to appointment by the President, by and with the advise and consent of the Senate, including such a position held on an acting basis; or

(ii) holds or held the position in the Agency, including such a position held on an acting basis, of—

(I) Executive Director;

(II) Deputy Director for Operations;

(III) Deputy Director for Intelligence;

(IV) Deputy Director for Administration; or

(V) Deputy Director for Science and Technology;

(C) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former Agency official described or referred to in subparagraph (B);

(D) the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible

criminal conduct of any of the officials described in subparagraph (B); or

(E) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, or audit, the Inspector General shall immediately notify and submit a report on such matter to the intelligence committees.

(4) Pursuant to Title V of the National Security Act of 1947, the Director shall submit to the intelligence committees any report or findings and recommendations of an inspection, investigation, or audit conducted by the office which has been requested by the Chairman or Ranking Minority Member of either committee.

(5)(A) An employee of the Agency, or of a contractor to the Agency, who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

(B) Not later than the end of the 14-calendar day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the Director notice of that determination, together with the complaint or information.

(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committees, together with any comments the Director considers appropriate.

(D)(i) If the Inspector General does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

(ii) The employee may contact the intelligence committees directly as described in clause (i) only if the employee—

(I) before making such a contact, furnishes to the Director, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the intelligence committees directly; and

(II) obtains and follows from the Director, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

(iii) A member or employee of one of the intelligence committees who receives a complaint or information under clause (i) does so in that member or employee's official capacity as a member or employee of that committee.

(E) The Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

(F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.

(G) In this paragraph:

(i) The term “urgent concern” means any of the following:

(I) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

(II) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

(III) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under subsection (e)(3)(B) in response to an employee’s reporting an urgent concern in accordance with this paragraph.

(ii) The term “intelligence committees” means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(e) AUTHORITIES OF THE INSPECTOR GENERAL.—(1) The Inspector General shall have direct and prompt access to the Director when necessary for any purpose pertaining to the performance of his duties.

(2) The Inspector General shall have access to any employee or any employee of a contractor of the Agency whose testimony is needed for the performance of his duties. In addition, he shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to the programs and operations with respect to which the Inspector General has responsibilities under this section. Failure on the part of any employee or contractor to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the Director, to include loss of employment or the termination of an existing contractual relationship.

(3) The Inspector General is authorized to receive and investigate complaints or information from any person concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the Agency—

(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

(B) no action constituting a reprisal, or threat of reprisal, for making such complaint may be taken by any employee of the Agency in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(4) The Inspector General shall have authority to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of his duties, which oath affirmation, or affidavit when administered or taken by or before an employee of the Office designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal.

(5)(A) Except as provided in subparagraph (B), the Inspector General is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the duties and responsibilities of the Inspector General.

(B) In the case of Government agencies, the Inspector General shall obtain information, documents, reports, answers, records, accounts, papers, and other data and evidence for the purpose specified in subparagraph (A) using procedures other than by subpoenas.

(C) The Inspector General may not issue a subpoena for or on behalf of any other element or component of the Agency.

(D) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, the subpoena shall be enforceable by order of any appropriate district court of the United States.

(6) The Inspector General shall be provided with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices.

(7) Subject to applicable law and the policies of the Director, the Inspector General shall select, appoint and employ such officers and employees as may be necessary to carry out his functions. In making such selections, the Inspector General shall ensure that such officers and employees have the requisite training and experience to enable him to carry out his duties effectively. In this regard, the Inspector General shall create within his organization a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of his duties.

(8) Subject to the concurrence of the Director, the Inspector General may request such information or assistance as may be necessary for carrying out his duties and responsibilities from any Government agency. Upon request of the Inspector General for such information or assistance, the head of the Government agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Government agency concerned, furnish to the Inspector General, or to an authorized designee, such information or assistance.

(f) SEPARATE BUDGET ACCOUNT.—Beginning with fiscal year 1991, and in accordance with procedures to be issued by the Director of Central Intelligence in consultation with the intelligence committees, the Director of Central Intelligence shall include in the National Foreign Intelligence Program budget a separate account for the Office of Inspector General established pursuant to this section.

(g) TRANSFER.—There shall be transferred to the Office the office of the Agency referred to as the “Office of Inspector General.”

The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, or available to such "Office of Inspector General" are hereby transferred to the Office established pursuant to this section.

SPECIAL ANNUITY COMPUTATION RULES FOR CERTAIN EMPLOYEES'  
SERVICE ABROAD

SEC. 18. [50 U.S.C. 403r] (a) Notwithstanding any provision of chapter 83 of title 5, United States Code, the annuity under subchapter III of such chapter of an officer or employee of the Central Intelligence Agency who retires on or after October 1, 1989, is not designated under section 203 of the Central Intelligence Agency Retirement Act, and has served abroad as an officer or employee of the Agency on or after January 1, 1987, shall be computed as provided in subsection (b).

(b)(1) The portion of the annuity relating to such service abroad that is actually performed at any time during the officer's or employee's first ten years of total service shall be computed at the rate and using the percent of average pay specified in section 8339(a)(3) of title 5, United States Code, that is normally applicable only to so much of an employee's total service as exceeds ten years.

(2) The portion of the annuity relating to service abroad as described in subsection (a) but that is actually performed at any time after the officer's or employee's first ten years of total service shall be computed as provided in section 8339(a)(3) of title 5, United States Code; but, in addition, the officer or employee shall be deemed for annuity computation purposes to have actually performed an equivalent period of service abroad during his or her first ten years of total service, and in calculating the portion of the officer's or employee's annuity for his or her first ten years of total service, the computation rate and percent of average pay specified in paragraph (1) shall also be applied to the period of such deemed or equivalent service abroad.

(3) The portion of the annuity relating to other service by an officer or employee as described in subsection (a) shall be computed as provided in the provisions of section 8339(a) of title 5, United States Code, that would otherwise be applicable to such service.

(4) For purposes of this subsection, the term "total service" has the meaning given such term under chapter 83 of title 5, United States Code.

(c) For purposes of subsections (f) through (m) of section 8339 of title 5, United States Code, an annuity computed under this section shall be deemed to be an annuity computed under subsections (a) and (o) of section 8339 of title 5, United States Code.

(d) The provisions of subsection (a) of this section shall not apply to an officer or employee of the Central Intelligence Agency who would otherwise be entitled to a greater annuity computed under an otherwise applicable subsection of section 8339 of title 5, United States Code.

SPECIAL RULES FOR DISABILITY RETIREMENT AND DEATH-IN-SERVICE  
BENEFITS WITH RESPECT TO CERTAIN EMPLOYEES

SEC. 19. [50 U.S.C. 403s] (a) OFFICERS AND EMPLOYEES TO WHOM CIARDS SECTION 231 RULES APPLY.—Notwithstanding any other provision of law, an officer or employee of the Central Intelligence Agency subject to retirement system coverage under subchapter III of chapter 83 of title 5, United States Code, who—

(1) has five years of civilian service credit toward retirement under such subchapter III of chapter 83, title 5, United States Code;

(2) has not been designated under section 203 of the Central Intelligence Agency Retirement Act (50 U.S.C. 403 note), as a participant in the Central Intelligence Agency Retirement and Disability System;

(3) has become disabled during a period of assignment to the performance of duties that are qualifying toward such designation under such section 203; and

(4) satisfies the requirements for disability retirement under section 8337 of title 5, United States Code—

shall, upon his own application or upon order of the Director, be retired on an annuity computed in accordance with the rules prescribed in section 231 of such Act, in lieu of an annuity computed as provided by section 8337 of title 5, United States Code.

(b) SURVIVORS OF OFFICERS AND EMPLOYEES TO WHOM CIARDS SECTION 232 RULES APPLY.—Notwithstanding any other provision of law, in the case of an officer or employee of the Central Intelligence Agency subject to retirement system coverage under subchapter III of chapter 83, title 5, United States Code, who—

(1) has at least eighteen months of civilian service credit toward retirement under such subchapter III of chapter 83, title 5, United States Code;

(2) has not been designated under section 203 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2013), as a participant in the Central Intelligence Agency Retirement and Disability System;

(3) prior to separation or retirement from the Agency, dies during a period of assignment to the performance of duties that are qualifying toward such designation under such section 203; and

(4) is survived by a widow or widower, former spouse, and/or a child or children as defined in section 204 and section 232 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees<sup>1</sup>, who would otherwise be entitled to an annuity under section 8341 of title 5, United States Code—

such surviving spouse, former spouse, or child of such officer or employee shall be entitled to an annuity computed in accordance with section 232 of such Act, in lieu of an annuity computed in accordance with section 8341 of title 5, United States Code.

<sup>1</sup>The amendment made by section 803(a)(3)(B)(iii) of P.L. 102-496 (106 Stat. 3252) was not executable. The amendment strikes "widow or widower, former spouse, and/or child or children as defined in section 204 and section 232 of such the Central Intelligence Agency Retirement Act of 1964 for Certain Employees" and inserts "surviving spouse, former spouse, or child as defined in section 102 of the Central Intelligence Agency Retirement Act".

(c) ANNUITIES UNDER THIS SECTION DEEMED ANNUITIES UNDER CSRS.—The annuities provided under subsections (a) and (b) of this section shall be deemed to be annuities under chapter 83 of title 5, United States Code, for purposes of the other provisions of such chapter and other laws (including the Internal Revenue Code of 1986) relating to such annuities, and shall be payable from the Central Intelligence Agency Retirement and Disability Fund maintained pursuant to section 202 of the Central Intelligence Agency Retirement Act.

GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY

SEC. 20. [50 U.S.C. 403t] (a) There is a General Counsel of the Central Intelligence Agency, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel is the chief legal officer of the Central Intelligence Agency.

(c) The General Counsel of the Central Intelligence Agency shall perform such functions as the Director of Central Intelligence may prescribe.

CENTRAL SERVICES PROGRAM

SEC. 21. [50 U.S.C. 403u] (a) IN GENERAL.—The Director may carry out a program under which elements of the Agency provide items and services on a reimbursable basis to other elements of the Agency, nonappropriated fund entities or instrumentalities associated or affiliated with the Agency, and other Government agencies. The Director shall carry out the program in accordance with the provisions of this section.

(b) PARTICIPATION OF AGENCY ELEMENTS.—(1) In order to carry out the program, the Director shall—

(A) designate the elements of the Agency that are to provide items or services under the program (in this section referred to as “central service providers”);

(B) specify the items or services to be provided under the program by such providers; and

(C) assign to such providers for purposes of the program such inventories, equipment, and other assets (including equipment on order) as the Director determines necessary to permit such providers to provide items or services under the program.

(2) The designation of elements and the specification of items and services under paragraph (1) shall be subject to the approval of the Director of the Office of Management and Budget.

(c) CENTRAL SERVICES WORKING CAPITAL FUND.—(1) There is established a fund to be known as the Central Services Working Capital Fund (in this section referred to as the “Fund”). The purpose of the Fund is to provide sums for activities under the program.

(2) There shall be deposited in the Fund the following:

(A) Amounts appropriated to the Fund.

(B) Amounts credited to the Fund from payments received by central service providers under subsection (e).

(C) Fees imposed and collected under subsection (f)(1).

(D) Amounts received in payment for loss or damage to equipment or property of a central service provider as a result of activities under the program.

(E) Other receipts from the sale or exchange of equipment or property of a central service provider as a result of activities under the program.

(F) Receipts from individuals in reimbursement for utility services and meals provided under the program.

(G) Receipts from individuals for the rental of property and equipment under the program.

(H) Such other amounts as the Director is authorized to deposit in or transfer to the Fund.

(3) Amounts in the Fund shall be available, without fiscal year limitation, for the following purposes:

(A) To pay the costs of providing items or services under the program.

(B) To pay the costs of carrying out activities under subsection (f)(2).

(d) LIMITATION ON AMOUNT OF ORDERS.—The total value of all orders for items or services to be provided under the program in any fiscal year may not exceed an amount specified in advance by the Director of the Office of Management and Budget.

(e) PAYMENT FOR ITEMS AND SERVICES.—(1) A Government agency provided items or services under the program shall pay the central service provider concerned for such items or services an amount equal to the costs incurred by the provider in providing such items or services plus any fee imposed under subsection (f). In calculating such costs, the Director shall take into account personnel costs (including costs associated with salaries, annual leave, and workers' compensation), plant and equipment costs (including depreciation of plant and equipment other than structures owned by the Agency), operation and maintenance expenses, amortized costs, and other expenses.

(2) Payment for items or services under paragraph (1) may take the form of an advanced payment by an agency from appropriations available to such agency for the procurement of such items or services.

(f) FEES.—(1) The Director may permit a central service provider to impose and collect a fee with respect to the provision of an item or service under the program. The amount of the fee may not exceed an amount equal to four percent of the payment received by the provider for the item or service.

(2)(A) Subject to subparagraph (B), the Director may obligate and expend amounts in the Fund that are attributable to the fees imposed and collected under paragraph (1) to acquire equipment or systems for, or to improve the equipment or systems of, central service providers and any elements of the Agency that are not designated for participation in the program in order to facilitate the designation of such elements for future participation in the program.

(B) The Director may not expend amounts in the Fund for purposes specified in subparagraph (A) in fiscal year 1998, 1999, or 2000 unless the Director—

(i) secures the prior approval of the Director of the Office of Management and Budget; and

(ii) submits notice of the proposed expenditure to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(g) TERMINATION.—(1) Subject to paragraph (2), the Director of Central Intelligence and the Director of the Office of Management and Budget, acting jointly—

(A) may terminate the program under this section and the Fund at any time; and

(B) upon such termination, shall provide for the disposition of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the program or the Fund.

(2) The Director of Central Intelligence and the Director of the Office of Management and Budget may not undertake any action under paragraph (1) until 60 days after the date on which the Directors jointly submit notice of such action to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

#### DETAIL OF EMPLOYEES

SEC. 22. [50 U.S.C. 403v] The Director may—

(1) detail any personnel of the Agency on a reimbursable basis indefinitely to the National Reconnaissance Office without regard to any limitation under law on the duration of details of Federal Government personnel; and

(2) hire personnel for the purpose of any detail under paragraph (1).

## CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT

(Public Law 88-643; 78 Stat. 1043; approved October 13, 1964)

AN ACT To provide for the establishment and maintenance of a Central Intelligence Agency Retirement and Disability System for a limited number of employees, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. [50 U.S.C. 2001 note] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Central Intelligence Agency Retirement Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—DEFINITIONS

Sec. 101. Definitions relating to the system.

Sec. 102. Definitions relating to participants and annuitants.

#### TITLE II—THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

##### PART A—ESTABLISHMENT OF SYSTEM

Sec. 201. The CIARDS system.

Sec. 202. Central Intelligence Agency Retirement and Disability Fund.

Sec. 203. Participants in the CIARDS system.

Sec. 204. Annuitants.

##### PART B—CONTRIBUTIONS

Sec. 211. Contributions to fund.

##### PART C—COMPUTATION OF ANNUITIES

Sec. 221. Computation of annuities.

Sec. 222. Annuities for former spouses.

Sec. 223. Election of survivor benefits for certain former spouses divorced as of November 15, 1982.

Sec. 224. Survivor annuity for certain other former spouses.

Sec. 225. Retirement annuity for certain former spouses.

Sec. 226. Survivor annuities for previous spouses.

##### PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

Sec. 231. Retirement for disability or incapacity—medical examination—recovery.

Sec. 232. Death in service.

Sec. 233. Voluntary retirement.

Sec. 234. Discontinued service benefits.

Sec. 235. Mandatory retirement.

Sec. 236. Eligibility for annuity.

##### PART E—LUMP-SUM PAYMENTS

Sec. 241. Lump-sum payments.

##### PART F—PERIOD OF SERVICE FOR ANNUITIES

Sec. 251. Computation of length of service.

- Sec. 252. Prior service credit.  
Sec. 253. Credit for service while on military leave.

PART G—MONEYS

- Sec. 261. Estimate of appropriations needed.  
Sec. 262. Investment of moneys in the fund.  
Sec. 263. Payment of benefits.  
Sec. 264. Attachment of moneys.  
Sec. 265. Recovery of payments.

PART H—RETIRED PARTICIPANTS RECALLED, REINSTATED, OR REAPPOINTED IN THE AGENCY OR REEMPLOYED IN THE GOVERNMENT

- Sec. 271. Recall.  
Sec. 272. Reemployment.  
Sec. 273. Reemployment compensation.

PART I—VOLUNTARY CONTRIBUTIONS

- Sec. 281. Voluntary contributions.

PART J—COST-OF-LIVING ADJUSTMENT OF ANNUITIES

- Sec. 291. Cost-of-living adjustment of annuities.

PART K—CONFORMITY WITH CIVIL SERVICE RETIREMENT SYSTEM

- Sec. 292. Authority to maintain existing areas of conformity between Civil Service and Central Intelligence Agency Retirement and Disability Systems.  
Sec. 293. Thrift savings plan participation.  
Sec. 294. Alternative forms of annuities.  
Sec. 295. Payments from CIARDS fund for portions of certain Civil Service Retirement System annuities.

TITLE III—PARTICIPATION IN THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM

- Sec. 301. Application of Federal Employees' Retirement System to Agency employees.  
Sec. 302. Special rules relating to section 203 criteria employees.  
Sec. 303. Special rules for other employees for service abroad.  
Sec. 304. Special rules for former spouses.  
Sec. 305. Administrative provisions.  
Sec. 306. Regulations.  
Sec. 307. Transition regulations.

## TITLE I—DEFINITIONS

**SEC. 101. [50 U.S.C. 2001] DEFINITIONS RELATING TO THE SYSTEM.**

When used in this Act:

(1) AGENCY.—The term “Agency” means the Central Intelligence Agency.

(2) DIRECTOR.—The term “Director” means the Director of Central Intelligence.

(3) QUALIFYING SERVICE.—The term “qualifying service” means service determined by the Director to have been performed in carrying out duties described in section 203.

(4) FUND BALANCE.—The term “fund balance” means the sum of—

(A) the investments of the fund calculated at par value; and

(B) the cash balance of the fund on the books of the Treasury.

(5) UNFUNDED LIABILITY.—The term “unfunded liability” means the estimated amount by which—

- (A) the present value of all benefits payable from the fund exceeds
- (B) the sum of—
- (i) the present value of deductions to be withheld from the future basic pay of participants subject to title II and of future Agency contributions to be made on the behalf of such participants;
  - (ii) the present value of Government payments to the fund under sections 261(c) and 261(d); and
  - (iii) the fund balance as of the date on which the unfunded liability is determined.
- (6) **NORMAL COST.**—The term “normal cost” means the level percentage of payroll required to be deposited in the fund to meet the cost of benefits payable under the system (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for government employees and less the cost of credit allowed for military service.
- (7) **LUMP-SUM CREDIT.**—The term “lump-sum credit” means the unrefunded amount consisting of retirement deductions made from a participant’s basic pay and amounts deposited by a participant covering earlier service, including any amounts deposited under section 252(h).
- (8) **CONGRESSIONAL INTELLIGENCE COMMITTEES.**—The term “congressional intelligence committees” means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.
- (9) **EMPLOYEE.**—The term “employee” includes an officer of the Agency.

**SEC. 102. [50 U.S.C. 2002] DEFINITIONS RELATING TO PARTICIPANTS AND ANNUITANTS.**

- (a) **GENERAL DEFINITIONS.**—When used in title II:
- (1) **FORMER PARTICIPANT.**—The term “former participant” means a person who—
    - (A) while an employee of the Agency was a participant in the system; and
    - (B) separates from the Agency without entitlement to immediate receipt of an annuity from the fund.
  - (2) **RETIRED PARTICIPANT.**—The term “retired participant” means a person who—
    - (A) while an employee of the Agency was a participant in the system; and
    - (B) is entitled to receive an annuity from the fund based upon such person’s service as a participant.
  - (3) **SURVIVING SPOUSE.**—
    - (A) **IN GENERAL.**—The term “surviving spouse” means the surviving wife or husband of a participant or retired participant who (i) was married to the participant or retired participant for at least 9 months immediately preceding the participant’s or retired participant’s death, or (ii) who is the parent of a child born of the marriage.
    - (B) **TREATMENT WHEN PARTICIPANT DIES LESS THAN 9 MONTHS AFTER MARRIAGE.**—In a case in which the participant or retired participant dies within the 9-month period beginning on the date of the marriage, the requirement

under subparagraph (A)(i) that a marriage have a duration of at least 9 months immediately preceding the death of the participant or retired participant shall be treated as having been met if—

(i) the death of the participant or retired participant was accidental; or

(ii) the surviving wife or husband had been previously married to the participant or retired participant (and subsequently divorced) and the aggregate time married is at least 9 months.

(4) **FORMER SPOUSE.**—The term “former spouse” means a former wife or husband of a participant, former participant, or retired participant as follows:

(A) **DIVORCES ON OR BEFORE DECEMBER 4, 1991.**—In the case of a divorce that became final on or before December 4, 1991, such term means a former wife or husband of a participant, former participant, or retired participant who was married to such participant for not less than 10 years during periods of the participant’s creditable service, at least 5 years of which were spent outside the United States by both such participant and former wife or husband during the participant’s service as an employee of the Agency.

(B) **DIVORCES AFTER DECEMBER 4, 1991.**—In the case of a divorce that becomes final after December 4, 1991, such term means a former wife or husband of a participant, former participant, or retired participant who was married to such participant for not less than 10 years during periods of the participant’s creditable service, at least 5 years of which were spent by the participant during the participant’s service as an employee of the Agency (i) outside the United States, or (ii) otherwise in a position the duties of which qualified the participant for designation by the Director as a participant under section 203.

(C) **CREDITABLE SERVICE.**—For purposes of subparagraphs (A) and (B), the term “creditable service” means all periods of a participant’s service that are creditable under sections 251, 252, and 253.

(5) **PREVIOUS SPOUSE.**—The term “previous spouse” means an individual who was married for at least 9 months to a participant, former participant, or retired participant who had at least 18 months of service which are creditable under sections 251, 252, and 253.

(6) **SPOUSAL AGREEMENT.**—The term “spousal agreement” means an agreement between a participant, former participant, or retired participant and the participant, former participant, or retired participant’s spouse or former spouse that—

(A) is in writing, is signed by the parties, and is notarized;

(B) has not been modified by court order; and

(C) has been authenticated by the Director.

(7) **COURT ORDER.**—The term “court order” means—

(A) a court decree of divorce, annulment, or legal separation; or

(B) a court order or court-approved property settlement agreement incident to such court decree of divorce, annulment, or legal separation.

(8) COURT.—The term “court” means a court of a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(b) DEFINITION OF CHILD.—For purposes of sections 221 and 232:

(1) IN GENERAL.—The term “child” means any of the following:

(A) MINOR CHILDREN.—An unmarried dependent child under 18 years of age, including—

(i) an adopted child;

(ii) a stepchild, but only if the stepchild lived with the participant or retired participant in a regular parent-child relationship;

(iii) a recognized natural child; and

(iv) a child who lived with the participant, for whom a petition of adoption was filed by the participant or retired participant, and who is adopted by the surviving spouse after the death of the participant or retired participant.

(B) DISABLED ADULT CHILDREN.—An unmarried dependent child, regardless of age, who is incapable of self-support because of a physical or mental disability incurred before age 18.

(C) STUDENTS.—An unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

(2) SPECIAL RULES FOR STUDENTS.—

(A) EXTENSION OF AGE TERMINATION OF STATUS AS “CHILD”.—For purposes of this subsection, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, shall be treated as having attained the age of 22 on the first day of July following that birthday.

(B) TREATMENT OF INTERIM PERIOD BETWEEN SCHOOL YEARS.—A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim does not exceed 5 months and if the child shows to the satisfaction of the Director that the child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately following the interim.

(3) DEPENDENT DEFINED.—For purposes of this subsection, the term “dependent”, with respect to the child of a participant or retired participant, means that the participant or retired participant was, at the time of the death of the participant or retired participant, either living with or contributing to the

support of the child, as determined in accordance with regulations prescribed under title II.

(4) EXCLUSION OF STEPCHILDREN FROM LUMP-SUM PAYMENT.—For purposes of section 241(c), the term “child” includes an adopted child and a natural child, but does not include a stepchild.

## **TITLE II—THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM**

### **Part A—Establishment of System**

#### **SEC. 201. [50 U.S.C. 2011] THE CIARDS SYSTEM.**

(a) IN GENERAL.—

(1) ESTABLISHMENT OF SYSTEM.—There is a retirement and disability system for certain employees of the Central Intelligence Agency known as the Central Intelligence Agency Retirement and Disability System (hereinafter in this Act referred to as the “system”), originally established pursuant to title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

(2) DCI REGULATIONS.—The Director shall prescribe regulations for the system. The Director shall submit any proposed regulations for the system to the congressional intelligence committees not less than 14 days before they take effect.

(b) ADMINISTRATION OF SYSTEM.—The Director shall administer the system in accordance with regulations prescribed under this title and with the principles established by this title.

(c) FINALITY OF DECISIONS OF DCI.—In the interests of the security of the foreign intelligence activities of the United States and in order further to implement paragraph (6) of section 103(c) of the National Security Act of 1947 (50 U.S.C. 403-3(c)) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, and notwithstanding the provisions of chapter 7 of title 5, United States Code, or any other provision of law (except section 305(b) of this Act), any determination by the Director authorized by this Act shall be final and conclusive and shall not be subject to review by any court.

#### **SEC. 202. [50 U.S.C. 2012] CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY FUND.**

The Director shall maintain the fund in the Treasury known as the “Central Intelligence Agency Retirement and Disability Fund” (hereinafter in this Act referred to as the “fund”), originally created pursuant to title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

#### **SEC. 203. [50 U.S.C. 2013] PARTICIPANTS IN THE CIARDS SYSTEM.**

(a) DESIGNATION OF PARTICIPANTS.—The Director may from time to time designate employees of the Agency who shall be entitled to participate in the system. Employees so designated who

elect to participate in the system are referred to in this Act as “participants”.

(b) **QUALIFYING SERVICE.**—Designation of employees under this section may be made only from among employees of the Agency who have completed at least 5 years of qualifying service. For purposes of this Act, qualifying service is service in the Agency performed in carrying out duties that are determined by the Director—

(1) to be in support of Agency activities abroad hazardous to life or health; or

(2) to be so specialized because of security requirements as to be clearly distinguishable from normal government employment.

(c) **ELECTION OF EMPLOYEE TO BE A PARTICIPANT.**—

(1) **PERMANENCE OF ELECTION.**—An employee of the Agency who elects to accept designation as a participant in the system shall remain a participant of the system for the duration of that individual’s employment with the Agency.

(2) **IRREVOCABILITY OF ELECTION.**—Such an election shall be irrevocable except as and to the extent provided in section 301(d).

(3) **ELECTION NOT SUBJECT TO APPROVAL.**—An election under this section is not subject to review or approval by the Director.

**SEC. 204. [50 U.S.C. 2014] ANNUITANTS.**

Persons who are annuitants under the system are—

(1) those persons who, on the basis of their service in the Agency, have met all requirements for an annuity under this title or any other Act and are receiving an annuity from the fund; and

(2) those persons who, on the basis of someone else’s service, meet all the requirements under this title or any other Act for an annuity payable from the fund.

## **Part B—Contributions**

**SEC. 211. [50 U.S.C. 2021] CONTRIBUTIONS TO FUND.**

(a) **IN GENERAL.**—

(1) **PARTICIPANT’S CONTRIBUTIONS.**—Except as provided in subsection (d), 7 percent of the basic pay received by a participant for any pay period shall be deducted and withheld from the pay of that participant and contributed to the fund.

(2) **AGENCY CONTRIBUTIONS.**—An equal amount shall be contributed to the fund for that pay period from the appropriation or fund which is used for payment of the participant’s basic pay.

(3) **DEPOSITS TO THE FUND.**—The amounts deducted and withheld from basic pay, together with the amounts so contributed from the appropriation or fund, shall be deposited by the Director to the credit of the fund.

(b) **CONSENT OF PARTICIPANT TO DEDUCTIONS FROM PAY.**—Each participant shall be deemed to consent and agree to such deductions from basic pay, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and de-

mands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participant is entitled under this title, notwithstanding any law, rule, or regulation affecting the individual's pay.

(c) TREATMENT OF CONTRIBUTIONS AFTER 35 YEARS OF SERVICE.—

(1) ACCRUAL OF INTEREST.—Amounts deducted and withheld from the basic pay of a participant under this section for pay periods after the first day of the first pay period beginning after the day on which the participant completes 35 years of creditable service computed under sections 251 and 252 (excluding service credit for unused sick leave under section 221(a)(2)) shall accrue interest. Such interest shall accrue at the rate of 3 percent a year through December 31, 1984, and thereafter at the rate computed under section 8334(e) of title 5, United States Code, and shall be compounded annually from the date on which the amount is so deducted and withheld until the date of the participant's retirement or death.

(2) USE OF AMOUNTS WITHHELD AFTER 35 YEARS OF SERVICE.—

(A) USE FOR DEPOSITS DUE UNDER SECTION 252(b).—Amounts described in paragraph (1), including interest accrued on such amounts, shall be applied upon the participant's retirement or death toward any deposit due under section 252(b).

(B) LUMP-SUM PAYMENT.—Any balance of such amounts not so required for such a deposit shall be refunded to the participant in a lump sum after the participant's separation (or, in the event of a death in service, to a beneficiary in order of precedence specified in subsection 241(c)), subject to prior notification of a current spouse, if any, unless the participant establishes to the satisfaction of the Director, in accordance with regulations which the Director may prescribe, that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.

(C) PURCHASES OF ADDITIONAL ELECTIVE BENEFITS.—In lieu of such a lump-sum payment, the participant may use such amounts—

(i) to purchase an additional annuity in accordance with section 281; or

(ii) provide any additional survivor benefit for a current or former spouse or spouses.

(d) OFFSET FOR SOCIAL SECURITY TAXES.—

(1) PERSONS COVERED.—In the case of a participant who was a participant subject to this title before January 1, 1984, and whose service—

(A) is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, and

(B) is not creditable service for any purpose under title III of this Act or chapter 84 of title 5, United States Code, there shall be deducted and withheld from the basic pay of the participant under this section during any pay period only the amount computed under paragraph (2).

(2) REDUCTION IN CONTRIBUTION.—The amount deducted and withheld from the basic pay of a participant during any pay period pursuant to paragraph (1) shall be the excess of—

(A) the amount determined by multiplying the percent applicable to the participant under subsection (a) by the basic pay payable to the participant for that pay period, over

(B) the amount of the taxes deducted and withheld from such basic pay under section 3101(a) of the Internal Revenue Code of 1954 (relating to old-age, survivors, and disability insurance) for that pay period.

## Part C—Computation of Annuities

### SEC. 221. [50 U.S.C. 2031] COMPUTATION OF ANNUITIES.

(a) ANNUITY OF PARTICIPANT.—

(1) COMPUTATION OF ANNUITY.—The annuity of a participant is the product of—

(A) the participant's high-3 average pay (as defined in paragraph (4)); and

(B) the number of years, not exceeding 35, of service credit (determined in accordance with sections 251 and 252) multiplied by 2 percent.

(2) CREDIT FOR UNUSED SICK LEAVE.—The total service of a participant who retires on an immediate annuity (except under section 231) or who dies leaving a survivor or survivors entitled to an annuity shall include (without regard to the 35-year limitation prescribed in paragraph (1)) the days of unused sick leave to the credit of the participant. Days of unused sick leave may not be counted in determining average basic pay or eligibility for an annuity under this title. A deposit shall not be required for days of unused sick leave credited under this paragraph.

(3) CREDITING OF PART-TIME SERVICE.—

(A) IN GENERAL.—In the case of a participant whose service includes service on a part-time basis performed after April 6, 1986, the participant's annuity shall be the sum of the amounts determined under subparagraphs (B) and (C).

(B) COMPUTATION OF PRE-APRIL 7, 1986, ANNUITY.—The portion of an annuity referred to in subparagraph (A) with respect to service before April 7, 1986, shall be the amount computed under paragraph (1) using the participant's length of service before that date (increased by the unused sick leave to the credit of the participant at the time of retirement) and the participant's high-3 average pay.

(C) COMPUTATION OF POST-APRIL 6, 1986, ANNUITY.—The portion of an annuity referred to in subparagraph (A) with respect to service after April 6, 1986, shall be the product of—

(i) the amount computed under paragraph (1), using the participant's length of service after that date and the participant's high-3 average pay, as deter-

mined by using the annual rate of basic pay that would be payable for full-time service; and

(ii) the ratio which the participant's actual service after April 6, 1986 (as determined by prorating the participant's total service after that date to reflect the service that was performed on a part-time basis) bears to the total service after that date that would be creditable for the participant if all the service had been performed on a full-time basis.

(D) TREATMENT OF EMPLOYMENT ON TEMPORARY OR INTERMITTENT BASIS.—Employment on a temporary or intermittent basis shall not be considered to be service on a part-time basis for purposes of this paragraph.

(4) HIGH-3 AVERAGE PAY DEFINED.—For purposes of this subsection, a participant's high-3 average pay is the amount of the participant's average basic pay for the highest 3 consecutive years of the participant's service for which full contributions have been made to the fund.

(5) COMPUTATION OF SERVICE.—In determining the aggregate period of service upon which an annuity is to be based, any fractional part of a month shall not be counted.

(b) SPOUSE OR FORMER SPOUSE SURVIVOR ANNUITY.—

(1) REDUCTION IN PARTICIPANT'S ANNUITY TO PROVIDE SPOUSE OR FORMER SPOUSE SURVIVOR ANNUITY.—

(A) GENERAL RULE.—Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 55), the participant shall receive a reduced annuity and provide a survivor annuity for the participant's spouse under this subsection or former spouse under section 222(b), or a combination of such annuities, as the case may be.

(B) JOINT ELECTION FOR WAIVER OR REDUCTION OF SPOUSE SURVIVOR ANNUITY.—A married participant or former participant and the participant's spouse may jointly elect in writing at the time of retirement to waive a survivor annuity for that spouse under this section or to reduce such survivor annuity under this section by designating a portion of the annuity of the participant as the base for the survivor annuity. If the marriage is dissolved following an election for such a reduced annuity and the spouse qualifies as a former spouse, the base used in calculating any annuity of the former spouse under section 222(b) may not exceed the portion of the participant's annuity designated under this subparagraph.

(C) JOINT ELECTION OF PARTICIPANT AND FORMER SPOUSE.—If a participant or former participant has a former spouse, such participant and the participant's former spouse may jointly elect by spousal agreement under section 264(b) to waive, reduce, or increase a survivor annuity under section 222(b) for that former spouse. Any such election must be made (i) before the end of the 12-month period beginning on the date on which the divorce or annulment involving that former spouse becomes

final, or (ii) at the time of retirement of the participant, whichever is later.

(D) UNILATERAL ELECTIONS IN ABSENCE OF SPOUSE OR FORMER SPOUSE.—The Director may prescribe regulations under which a participant or former participant may make an election under subparagraph (B) or (C) without the participant's spouse or former spouse if the participant establishes to the satisfaction of the Director that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse or former spouse.

(2) AMOUNT OF REDUCTION IN PARTICIPANT'S ANNUITY.—The annuity of a participant or former participant providing a survivor annuity under this section (or section 222(b)), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first \$3,600 plus 10 percent of any amount over \$3,600. The reduction under this paragraph shall be calculated before any reduction under section 222(a)(5).

(3) AMOUNT OF SURVIVING SPOUSE ANNUITY.—

(A) IN GENERAL.—If a retired participant receiving a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse. The amount of the annuity shall be equal to 55 percent of (i) the full amount of the participant's annuity computed under subsection (a), or (ii) any lesser amount elected as the base for the survivor annuity under paragraph (1)(B).

(B) LIMITATION.—Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the retired participant who qualifies for an annuity under section 222(b) may not exceed 55 percent of the portion (if any) of the base for survivor annuities which remains available under section 222(b)(4)(B).

(C) EFFECTIVE DATE AND TERMINATION OF ANNUITY.—An annuity payable from the fund to a surviving spouse under this paragraph shall commence on the day after the retired participant dies and shall terminate on the last day of the month before the surviving spouse's death or remarriage before attaining age 55. If such survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is dissolved by death, annulment, or divorce if any lump sum paid upon termination of the annuity is returned to the fund.

(c) 18-MONTH OPEN PERIOD AFTER RETIREMENT TO PROVIDE SPOUSE COVERAGE.—

(1) SURVIVOR ANNUITY ELECTIONS.—

(A) ELECTION WHEN SPOUSE COVERAGE WAIVED AT TIME OF RETIREMENT.—A participant or former participant who retires after March 31, 1992 and who—

(i) is married at the time of retirement; and

(ii) elects at that time (in accordance with subsection (b)) to waive a survivor annuity for the spouse, may, during the 18-month period beginning on the date of the retirement of the participant, elect to have a reduction under subsection (b) made in the annuity of the participant (or in such portion thereof as the participant may designate) in order to provide a survivor annuity for the participant's spouse.

(B) ELECTION WHEN REDUCED SPOUSE ANNUITY ELECTED.—A participant or former participant who retires after March 31, 1992, and—

(i) who, at the time of retirement, is married, and

(ii) who, at that time designates (in accordance with subsection (b)) that a portion of the annuity of such participant is to be used as the base for a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a greater portion of the annuity of such participant so used.

(2) DEPOSIT REQUIRED.—

(A) REQUIREMENT.—An election under paragraph (1) shall not be effective unless the amount specified in subparagraph (B) is deposited into the fund before the end of that 18-month period.

(B) AMOUNT OF DEPOSIT.—The amount to be deposited with respect to an election under this subsection is the amount equal to the sum of the following:

(i) ADDITIONAL COST TO SYSTEM.—The additional cost to the system that is associated with providing a survivor annuity under subsection (b) and that results from such election, taking into account—

(I) the difference (for the period between the date on which the annuity of the participant or former participant commences and the date of the election) between the amount paid to such participant or former participant under this title and the amount which would have been paid if such election had been made at the time the participant or former participant applied for the annuity; and

(II) the costs associated with providing for the later election.

(ii) INTEREST.—Interest on the additional cost determined under clause (i), computed using the interest rate specified or determined under section 8334(e) of title 5, United States Code, for the calendar year in which the amount to be deposited is determined.

(3) VOIDING OF PREVIOUS ELECTIONS.—An election by a participant or former participant under this subsection voids prospectively any election previously made in the case of such participant under subsection (b).

(4) REDUCTIONS IN ANNUITY.—An annuity that is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the participant or former participant whose annuity is so reduced.

(5) RIGHTS AND OBLIGATIONS RESULTING FROM REDUCED ANNUITY ELECTION.—Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations that would have resulted had the participant involved elected such annuity at the time of retirement.

(d) ANNUITIES FOR SURVIVING CHILDREN.—

(1) PARTICIPANTS DYING BEFORE APRIL 1, 1992.—In the case of a retired participant who died before April 1, 1992, and who is survived by a child or children—

(A) if the retired participant was survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under paragraph (3)(A); and

(B) if the retired participant was not survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under paragraph (3)(B).

(2) PARTICIPANTS DYING ON OR AFTER APRIL 1, 1992.—In the case of a retired participant who dies on or after April 1, 1992, and who is survived by a child or children—

(A) if the retired participant is survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under paragraph (3)(A); and

(B) if the retired participant is not survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid to or on behalf of each such surviving child an annuity determined under paragraph (3)(B).

(3) AMOUNT OF ANNUITY.—

(A) The annual amount of an annuity for the surviving child of a participant covered by paragraph (1)(A) or (2)(A) of this subsection (or covered by paragraph (1)(A) or (2)(A) of section 232(c)) is the smallest of the following:

(i) 60 percent of the participant's high-3 average pay, as determined under subsection (a)(4), divided by the number of children.

(ii) \$900, as adjusted under section 291.

(iii) \$2,700, as adjusted under section 291, divided by the number of children.

(B) The amount of an annuity for the surviving child of a participant covered by paragraph (1)(B) or (2)(B) of this subsection (or covered by paragraph (1)(B) or (2)(B) of section 232(c)) is the smallest of the following:

(i) 75 percent of the participant's high-3 average pay, as determined under subsection (a)(4), divided by the number of children.

(ii) \$1,080, as adjusted under section 291.

(iii) \$3,240, as adjusted under section 291, divided by the number of children.

(4) RECOMPUTATION OF CHILD ANNUITIES.—

(A) In the case of a child annuity payable under paragraph (1), upon the death of a surviving spouse or the ter-

mination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though the spouse or child had not survived the retired participant.

(B) In the case of a child annuity payable under paragraph (2), upon the death of a surviving spouse or former spouse or termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the retired participant. If the annuity of a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities of all currently eligible children were then being initiated.

(5) DEFINITION OF FORMER SPOUSE.—For purposes of this subsection, the term “former spouse” includes any former wife or husband of the retired participant, regardless of the length of marriage or the amount of creditable service completed by the participant.

(e) COMMENCEMENT AND TERMINATION OF CHILD ANNUITIES.—

(1) COMMENCEMENT.—An annuity payable to a child under subsection (d), or under section 232(c), shall begin on the day after the date on which the participant or retired participant dies or, in the case of an individual over the age of 18 who is not a child within the meaning of section 102(b), shall begin or resume on the first day of the month in which the individual later becomes or again becomes a student as described in section 102(b). Such annuity may not commence until any lump-sum that has been paid is returned to the fund.

(2) TERMINATION.—Such an annuity shall terminate on the last day of the month before the month in which the recipient of the annuity dies or no longer qualifies as a child (as defined in section 102(b)).

(f) PARTICIPANTS NOT MARRIED AT TIME OF RETIREMENT.—

(1) DESIGNATION OF PERSONS WITH INSURABLE INTEREST.—

(A) AUTHORITY TO MAKE DESIGNATION.—Subject to the rights of former spouses under sections 221(b) and 222, at the time of retirement an unmarried participant found by the Director to be in good health may elect to receive an annuity reduced in accordance with subparagraph (B) and designate in writing an individual having an insurable interest in the participant to receive an annuity under the system after the participant’s death. The amount of such an annuity shall be equal to 55 percent of the participant’s reduced annuity.

(B) REDUCTION IN PARTICIPANT’S ANNUITY.—The annuity payable to the participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by an additional 5 percent for each full 5 years the designated individual is younger than the participant. The total reduction under this subparagraph may not exceed 40 percent.

(C) COMMENCEMENT OF SURVIVOR ANNUITY.—The annuity payable to the designated individual shall begin on

the day after the retired participant dies and terminate on the last day of the month before the designated individual dies.

(D) RECOMPUTATION OF PARTICIPANT'S ANNUITY ON DEATH OF DESIGNATED INDIVIDUAL.—An annuity which is reduced under this paragraph shall, effective the first day of the month following the death of the designated individual, be recomputed and paid as if the annuity had not been so reduced.

(2) ELECTION OF SURVIVOR ANNUITY UPON SUBSEQUENT MARRIAGE.—A participant who is unmarried at the time of retirement and who later marries may irrevocably elect, in a signed writing received by the Director within one year after the marriage, to receive a reduced annuity as provided in section 221(b). Such election and reduction shall be effective on the first day of the month beginning 9 months after the date of marriage. The election voids prospectively any election previously made under paragraph (1).

(g) EFFECT OF DIVORCE AFTER RETIREMENT.—

(1) RECOMPUTATION OF RETIRED PARTICIPANT'S ANNUITY UPON DIVORCE.—An annuity which is reduced under this section (or any similar prior provision of law) to provide a survivor annuity for a spouse shall, if the marriage of the retired participant to such spouse is dissolved, be recomputed and paid for each full month during which a retired participant is not married (or is remarried, if there is no election in effect under paragraph (2)) as if the annuity had not been so reduced, subject to any reduction required to provide a survivor annuity under subsection (b) or (c) of section 222 or under section 226.

(2) ELECTION OF SURVIVOR ANNUITY UPON SUBSEQUENT REMARRIAGE.—

(A) IN GENERAL.—Upon remarriage, the retired participant may irrevocably elect, by means of a signed writing received by the Director within one year after such remarriage, to receive a reduced annuity for the purpose of providing an annuity for the new spouse of the retired participant in the event such spouse survives the retired participant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 222(b)(5) or elected under subparagraph (B)).

(B) WHEN ANNUITY PREVIOUSLY NOT (OR NOT FULLY) REDUCED.—

(i) ELECTION.—If the retired participant's annuity was not reduced (or was not fully reduced) to provide a survivor annuity for the participant's spouse or former spouse as of the time of retirement, the retired participant may make an election under the first sentence of subparagraph (A) upon remarriage to a spouse other than the spouse at the time of retirement. For any remarriage that occurred before August 14, 1991, the retired participant may make such an election within 2 years after such date.

(ii) DEPOSIT REQUIRED.—

(I) The retired participant shall, within one year after the date of the remarriage (or by August 14, 1993 for any remarriage that occurred before August 14, 1991), deposit in the fund an amount determined by the Director, as nearly as may be administratively feasible, to reflect the amount by which the retired participant's annuity would have been reduced if the election had been in effect since the date the annuity commenced, plus interest.

(II) The annual rate of interest for each year during which the retired participant's annuity would have been reduced if the election had been in effect since the date the annuity commenced shall be 6 percent.

(III) If the retired participant does not make the deposit, the Director shall collect such amount by offset against the participant's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the retired participant, and the retired participant is deemed to consent to such offset.

(IV) The deposit required by this subparagraph may be made by the surviving spouse of the retired participant.

(C) EFFECTS OF ELECTION.—An election under this paragraph and the reduction in the participant's annuity shall be effective on the first day of the month beginning 9 months after the date of remarriage. A survivor annuity elected under this paragraph shall be treated in all respects as a survivor annuity under subsection (b).

(h) COORDINATION OF ANNUITIES.—

(1) SURVIVING SPOUSE.—A surviving spouse whose survivor annuity was terminated because of remarriage before attaining age 55 shall not be entitled under subsection (b)(3)(C) to the restoration of that survivor annuity payable from the fund unless the surviving spouse elects to receive it instead of any other survivor annuity to which the surviving spouse may be entitled under the system or any other retirement system for Government employees by reason of the remarriage.

(2) FORMER SPOUSE.—A surviving former spouse of a participant or retired participant shall not become entitled under section 222(b) or 224 to a survivor annuity or to the restoration of a survivor annuity payable from the fund unless the surviving former spouse elects to receive it instead of any other survivor annuity to which the surviving former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(3) SURVIVING SPOUSE OF POST-RETIREMENT MARRIAGE.—A surviving spouse who married a participant after the participant's retirement shall be entitled to a survivor annuity payable from the fund only upon electing that annuity instead of any other survivor annuity to which the surviving spouse may be entitled under this or any other retirement system for Gov-

ernment employees on the basis of a marriage to someone other than the retired participant.

(i) SUPPLEMENTAL SURVIVOR ANNUITIES.—

(1) SPOUSE OF RECALLED ANNUITANT.—A married recalled annuitant who reverts to retired status with entitlement to a supplemental annuity under section 271(b) shall, unless the annuitant and the annuitant's spouse jointly elect in writing to the contrary at the time of reversion to retired status, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for the annuitant's spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant.

(2) REGULATIONS.—The Director shall prescribe regulations to provide for the application of paragraph (1) of this subsection and of subsection (b) of section 271 in any case in which an annuitant has a former spouse who was married to the recalled annuitant at any time during the period of recall service and who qualifies for an annuity under section 222(b).

(j) OFFSET OF ANNUITIES BY AMOUNT OF SOCIAL SECURITY BENEFIT.—Notwithstanding any other provision of this title, an annuity (including a disability annuity) payable under this title to an individual described in sections 211(d)(1) and 301(c)(1) and any survivor annuity payable under this title on the basis of the service of such individual shall be reduced in a manner consistent with section 8349 of title 5, United States Code, under conditions consistent with the conditions prescribed in that section.

(k) INFORMATION FROM OTHER AGENCIES.—

(1) OTHER AGENCIES.—For the purpose of ensuring the accuracy of the information used in the determination of eligibility for and the computation of annuities payable from the fund under this title, at the request of the Director—

(A) the Secretary of Defense shall provide information on retired or retainer pay paid under title 10, United States Code;

(B) the Secretary of Veterans Affairs shall provide information on pensions or compensation paid under title 38, United States Code;

(C) the Secretary of Health and Human Services shall provide information contained in the records of the Social Security Administration; and

(D) the Secretary of Labor shall provide information on benefits paid under subchapter I of chapter 81 of title 5, United States Code.

(2) LIMITATION ON INFORMATION REQUESTED.—The Director shall request only such information as the Director determines is necessary.

(3) LIMITATION ON USES OF INFORMATION.—The Director, in consultation with the officials from whom information is requested, shall ensure that information made available under this subsection is used only for the purposes authorized.

(l) INFORMATION ON RIGHTS UNDER THE SYSTEM.—The Director shall, on an annual basis—

(1) inform each retired participant of the participant's right of election under subsections (c), (f)(2), and (g); and

(2) to the maximum extent practicable, inform spouses and former spouses of participants, former participants, and retired participants of their rights under this Act.

**SEC. 222. [50 U.S.C. 2032] ANNUITIES FOR FORMER SPOUSES.**

(a) FORMER SPOUSE SHARE OF PARTICIPANT'S ANNUITY.—

(1) PRO RATA SHARE.—Unless otherwise expressly provided by a spousal agreement or court order under section 264(b), a former spouse of a participant, former participant, or retired participant is entitled to an annuity—

(A) if married to the participant, former participant, or retired participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant throughout such creditable service, equal to that proportion of 50 percent of such annuity that is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant under this title bears to the total number of days of such creditable service.

(2) DISQUALIFICATION UPON REMARRIAGE BEFORE AGE 55.—A former spouse is not qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 55 years of age.

(3) COMMENCEMENT OF ANNUITY.—The annuity of a former spouse under this subsection commences on the day the participant upon whose service the annuity is based becomes entitled to an annuity under this title or on the first day of the month after the divorce or annulment involved becomes final, whichever is later.

(4) TERMINATION OF ANNUITY.—The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the month in which the former spouse dies or remarries before 55 years of age; or

(B) the date on which the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(5) TREATMENT OF PARTICIPANT'S ANNUITY.—

(A) REDUCTION IN PARTICIPANT'S ANNUITY.—The annuity payable to any participant shall be reduced by the amount of an annuity under this subsection paid to any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse, or other survivor under this title; and

(ii) any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or under section 221(b).

(B) TREATMENT WHEN ANNUITANT RETURNS TO SERVICE.—If an annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 271, or reinstated or reappointed, in the case of a recovered disability annuitant, or if any annuitant is reemployed as pro-

- vided for under sections 272 and 273, the pay of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the fund.
- (6) **DISABILITY ANNUITANT.**—Notwithstanding paragraph (3), in the case of a former spouse of a disability annuitant—
- (A) the annuity of that former spouse shall commence on the date on which the participant would qualify on the basis of the participant's creditable service for an annuity under this title (other than a disability annuity) or the date on which the disability annuity begins, whichever is later, and
- (B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.
- (7) **ELECTION OF BENEFITS.**—A former spouse of a participant, former participant, or retired participant shall not become entitled under this subsection to an annuity payable from the fund unless the former spouse elects to receive it instead of any survivor annuity to which the former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.
- (8) **LIMITATION IN CASE OF MULTIPLE FORMER SPOUSE ANNUITIES.**—No spousal agreement or court order under section 264(b) involving a participant may provide for an annuity or a combination of annuities under this subsection that exceeds the annuity of the participant.
- (b) **FORMER SPOUSE SURVIVOR ANNUITY.**—
- (1) **PRO RATA SHARE.**—Subject to any election under section 221(b)(1)(B) and (C) and unless otherwise expressly provided by a spousal agreement or court order under section 264(b), if an annuitant is survived by a former spouse, the former spouse shall be entitled—
- (A) if married to the annuitant throughout the creditable service of the annuitant, to a survivor annuity equal to 55 percent of the unreduced amount of the annuitant's annuity, as computed under section 221(a); and
- (B) if not married to the annuitant throughout such creditable service, to a survivor annuity equal to that proportion of 55 percent of the unreduced amount of such annuity that is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant under this title bears to the total number of days of such creditable service.
- (2) **DISQUALIFICATION UPON REMARRIAGE BEFORE AGE 55.**—A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 55 years of age.
- (3) **COMMENCEMENT, TERMINATION, AND RESTORATION OF ANNUITY.**—An annuity payable from the fund under this title to a surviving former spouse under this subsection shall com-

mence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 55. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is dissolved by death, annulment, or divorce if any lump sum paid upon termination of the annuity is returned to the fund.

(4) SURVIVOR ANNUITY AMOUNT.—

(A) MAXIMUM AMOUNT.—The maximum survivor annuity or combination of survivor annuities under this subsection (and section 221(b)(3)) with respect to any participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 221(a).

(B) LIMITATION ON OTHER SURVIVOR ANNUITIES BASED ON SERVICE OF SAME PARTICIPANT.—Once a survivor annuity has been provided under this subsection for any former spouse, a survivor annuity for another individual may thereafter be provided under this subsection (or section 221(b)(3)) with respect to the participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) FINALITY OF COURT ORDER UPON DEATH OF PARTICIPANT.—After the death of a participant or retired participant, a court order under section 264(b) may not adjust the amount of the annuity of a former spouse of that participant or retired participant under this section.

(5) EFFECT OF TERMINATION OF FORMER SPOUSE ENTITLEMENT.—

(A) RECOMPUTATION OF PARTICIPANT'S ANNUITY.—If a former spouse of a retired participant dies or remarries before attaining age 55, the annuity of the retired participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid, effective on the first day of the month beginning after such death or remarriage, as if the annuity had not been so reduced, unless an election is in effect under subparagraph (B).

(B) ELECTION OF SPOUSE ANNUITY.—Subject to paragraph (4)(B), the participant may elect in writing within one year after receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 221(b)(3) for any spouse of the participant.

(c) OPTIONAL ADDITIONAL SURVIVOR ANNUITIES FOR OTHER FORMER SPOUSE OR SURVIVING SPOUSE.—

(1) IN GENERAL.—In the case of any participant providing a survivor annuity under subsection (b) for a former spouse—

(A) such participant may elect, or

(B) a spousal agreement or court order under section 264(b) may provide for,

an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Director.

(2) LIMITATION.—Neither the total amount of survivor annuity or annuities under this subsection with respect to any participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section or section 221, may exceed 55 percent of the unreduced amount of the participant's annuity, as computed under section 221(a).

(3) CONTRIBUTION FOR ADDITIONAL ANNUITIES.—

(A) PROVISION OF ADDITIONAL SURVIVOR ANNUITY.—In accordance with regulations which the Director shall prescribe, the participant involved may provide for any annuity under this subsection—

(i) by a reduction in the annuity or an allotment from the basic pay of the participant;

(ii) by a lump-sum payment or installment payments to the fund; or

(iii) by any combination thereof.

(B) ACTUARIAL EQUIVALENCE TO BENEFIT.—The present value of the total amount to accrue to the fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Director.

(C) EFFECT OF FORMER SPOUSE'S DEATH OR DISQUALIFICATION.—If a former spouse predeceases the participant or remarries before attaining age 55 (or, in the case of a spouse, the spouse predeceases the participant or does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity reduction or pay allotment under subparagraph (A) is in effect for that spouse or former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the pay allotment terminated, as the case may be; and

(ii) any amount accruing to the fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Director.

(D) RECOMPUTATION UPON DEATH OR REMARRIAGE OF FORMER SPOUSE.—Under regulations prescribed by the Director, an annuity shall be recomputed (or a pay allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of the participant dies or remarries before attaining age 55 and an increased annuity is provided for that spouse in accordance with this section.

(4) COMMENCEMENT AND TERMINATION OF ADDITIONAL SURVIVOR ANNUITY.—An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the

participant dies and shall terminate on the last day of the month before the spouse's or the former spouse's death or remarriage before attaining age 55.

(5) NONAPPLICABILITY OF COLA PROVISION.—Section 291 does not apply to an annuity under this subsection, unless authorized under regulations prescribed by the Director.

**SEC. 223. [50 U.S.C. 2033] ELECTION OF SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES DIVORCED AS OF NOVEMBER 15, 1982.**

(a) FORMER SPOUSES AS OF NOVEMBER 15, 1982.—A participant, former participant, or retired participant in the system who on November 15, 1982, had a former spouse may, by a spousal agreement, elect to receive a reduced annuity and provide a survivor annuity for such former spouse under section 222(b).

(b) TIME FOR MAKING ELECTION.—

(1) If the participant or former participant has not retired under such system on or before November 15, 1982, an election under this section may be made at any time before retirement.

(2) If the participant or former participant has retired under such system on or before November 15, 1982, an election under this section may be made within such period after November 15, 1982, as the Director may prescribe.

(3) For the purposes of applying this title, any such election shall be treated in the same manner as if it were a spousal agreement under section 264(b).

(c) BASE FOR ANNUITY.—An election under this section may provide for a survivor annuity based on all or any portion of that part of the annuity of the participant which is not designated or committed as a base for a survivor annuity for a spouse or any other former spouse of the participant. The participant and the participant's spouse may make an election under section 221(b)(1)(B) before the time of retirement for the purpose of allowing an election to be made under this section.

(d) REDUCTION IN PARTICIPANT'S ANNUITY.—

(1) COMPUTATION.—The amount of the reduction in the participant's annuity shall be determined in accordance with section 221(b)(2).

(2) EFFECTIVE DATE OF REDUCTION.—Such reduction shall be effective as of—

(A) the commencing date of the participant's annuity, in the case of an election under subsection (b)(1); or

(B) November 15, 1982, in the case of an election under subsection (b)(2).

**SEC. 224. [50 U.S.C. 2034] SURVIVOR ANNUITY FOR CERTAIN OTHER FORMER SPOUSES.**

(a) SURVIVOR ANNUITY.—

(1) IN GENERAL.—An individual who was a former spouse of a participant or retired participant on November 15, 1982, shall be entitled, except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 percent of the greater of—

(A) the unreduced amount of the participant's or retired participant's annuity, as computed under section 221(a); or

- (B) the unreduced amount of what such annuity as so computed would be if the participant, former participant, or retired participant had not elected payment of the lump-sum credit under section 294.
- (2) REDUCTION IN SURVIVOR ANNUITY.—A survivor annuity payable under this section shall be reduced by an amount equal to any survivor annuity payments made to the former spouse under section 223.
- (b) LIMITATIONS.—A former spouse is not entitled to a survivor annuity under this section if—
- (1) the former spouse remarries before age 55, except that the entitlement of the former spouse to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or
  - (2) the former spouse is less than 50 years of age.
- (c) COMMENCEMENT AND TERMINATION OF ANNUITY.—
- (1) COMMENCEMENT OF ANNUITY.—The entitlement of a former spouse to a survivor annuity under this section shall commence—
    - (A) in the case of a former spouse of a participant or retired participant who is deceased as of October 1, 1986, beginning on the later of—
      - (i) the 60th day after such date; or
      - (ii) the date on which the former spouse reaches age 50; and
    - (B) in the case of any other former spouse, beginning on the latest of—
      - (i) the date on which the participant or retired participant to whom the former spouse was married dies;
      - (ii) the 60th day after October 1, 1986; or
      - (iii) the date on which the former spouse attains age 50.
  - (2) TERMINATION OF ANNUITY.—The entitlement of a former spouse to a survivor annuity under this section terminates on the last day of the month before the former spouse's death or remarriage before attaining age 55. The entitlement of a former spouse to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce.
- (d) APPLICATION.—
- (1) TIME LIMIT; WAIVER.—A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require. Any such application shall be submitted not later than April 1, 1989. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.
  - (2) RETROACTIVE BENEFITS.—Upon approval of an application provided under paragraph (1), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in

no event shall a survivor annuity be payable under this section with respect to any period before October 1, 1986.

(e) RESTORATION OF ANNUITY.—Notwithstanding subsection (d)(1), the deadline by which an application for a survivor annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such a survivor annuity is restored under subsection (b)(1) or (c)(2).

**SEC. 225. [50 U.S.C. 2035] RETIREMENT ANNUITY FOR CERTAIN FORMER SPOUSES.**

(a) RETIREMENT ANNUITY.—An individual who was a former spouse of a participant, former participant, or retired participant on November 15, 1982, and any former spouse divorced after November 15, 1982, from a participant or former participant who retired before November 15, 1982, shall be entitled, except to the extent such former spouse is disqualified under subsection (b), to an annuity—

(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(2) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

(b) LIMITATIONS.—A former spouse is not entitled to an annuity under this section if—

(1) the former spouse remarries before age 55, except that the entitlement of the former spouse to an annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(2) the former spouse is less than 50 years of age.

(c) COMMENCEMENT AND TERMINATION.—

(1) RETIREMENT ANNUITIES.—The entitlement of a former spouse to an annuity under this section—

(A) shall commence on the later of—

(i) the day the participant upon whose service the right to the annuity is based becomes entitled to an annuity under this title;

(ii) the first day of the month in which the divorce or annulment involved becomes final; or

(iii) such former spouse's 50th birthday; and

(B) shall terminate on the earlier of—

(i) the last day of the month before the former spouse dies or remarries before 55 years of age, except that the entitlement of the former spouse to an annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(ii) the date on which the annuity of the participant terminates.

(2) DISABILITY ANNUITIES.—Notwithstanding paragraph (1)(A)(i), in the case of a former spouse of a disability annuitant—

(A) the annuity of the former spouse shall commence on the date on which the participant would qualify on the basis of the participant's creditable service for an annuity

under this title (other than disability annuity) or the date the disability annuity begins, whichever is later; and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(3) ELECTION OF BENEFITS.—A former spouse of a participant or retired participant shall not become entitled under this section to an annuity or to the restoration of an annuity payable from the fund unless the former spouse elects to receive it instead of any survivor annuity to which the former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(4) APPLICATION.—

(A) TIME LIMIT; WAIVER.—An annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require, not later than June 2, 1990. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(B) RETROACTIVE BENEFITS.—Upon approval of an application under subparagraph (A), the appropriate annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to an annuity under this section, but in no event shall an annuity be payable under this section with respect to any period before December 2, 1987.

(d) RESTORATION OF ANNUITIES.—Notwithstanding subsection (c)(4)(A), the deadline by which an application for a retirement annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such annuity is restored under subsection (b)(1) or (c)(1)(B).

(e) SAVINGS PROVISION.—Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this title.

**SEC. 226. [50 U.S.C. 2036] SURVIVOR ANNUITIES FOR PREVIOUS SPOUSES.**

The Director shall prescribe regulations under which a previous spouse who is divorced after September 29, 1988, from a participant, former participant, or retired participant shall be eligible for a survivor annuity to the same extent and, to the greatest extent practicable, under the same conditions (including reductions to be made in the annuity of the participant) applicable to former spouses (as defined in section 8331(23) of title 5, United States Code) of participants in the Civil Service Retirement and Disability System (CSRS) as prescribed by the Civil Service Retirement Spouse Equity Act of 1984.

## Part D—Benefits Accruing to Certain Participants

### SEC. 231. [50 U.S.C. 2051] RETIREMENT FOR DISABILITY OR INCAPACITY—MEDICAL EXAMINATION—RECOVERY.

#### (a) DISABILITY RETIREMENT.—

(1) ELIGIBILITY.—A participant who has become disabled shall, upon the participant's own application or upon order of the Director, be retired on an annuity computed under subsection (b).

(2) STANDARD FOR DISABILITY DETERMINATION.—A participant shall be considered to be disabled only if the participant—

(A) is found by the Director to be unable, because of disease or injury, to render useful and efficient service in the participant's position; and

(B) is not qualified for reassignment, under procedures prescribed by the Director, to a vacant position in the Agency at the same grade or level and in which the participant would be able to render useful and efficient service.

(3) TIME LIMIT FOR APPLICATION.—

(A) ONE YEAR REQUIREMENT.—A claim may be allowed under this section only if the application is submitted before the participant is separated from the Agency or within one year thereafter.

(B) WAIVER FOR MENTALLY INCOMPETENT PARTICIPANT.—The time limitation may be waived by the Director for a participant who, at the date of separation from the Agency or within one year thereafter, is mentally incompetent, if the application is filed with the Agency within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

#### (b) COMPUTATION OF DISABILITY ANNUITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), an annuity payable under subsection (a) shall be computed under section 221(a). However, if the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the system at the time of retirement, the annuity shall be computed on the assumption that the participant has had 20 years of service, but the additional service credit that may accrue to a participant under this paragraph may not exceed the difference between the participant's age at the time of retirement and age 60.

(2) COORDINATION WITH MILITARY RETIRED PAY AND VETERANS' COMPENSATION AND PENSION.—If a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 252(e)(3)) or Department of Veterans Affairs compensation or pension in lieu of such retired or retainer pay, the annuity of that participant shall be computed under section 221(a), excluding credit for such military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532 of title 5, United States

Code, or the Department of Veterans Affairs compensation or pension in lieu of such retired or retainer pay, is less than the annuity that would be payable under this section in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity payable under section 221(a).

(c) MEDICAL EXAMINATIONS.—

(1) MEDICAL EXAMINATION REQUIRED FOR DETERMINATION OF DISABILITY.—In each case, the participant shall be given a medical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons.

(2) ANNUAL REEXAMINATIONS UNTIL AGE 60.—Unless the disability is permanent, like examinations shall be made annually until the annuitant becomes age 60. If the Director determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that the annuitant can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date the annuitant's recovery is determined.

(3) REINSTATEMENT.—Upon application, the Director may reinstate any such recovered disability annuitant in the grade held at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of the annuitant's contemporaries in the Agency, appoint the annuitant to a grade higher than the one held before retirement.

(4) TERMINATION OF DISABILITY ANNUITY.—Payment of the annuity shall continue until a date one year after the date of examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier.

(5) PAYMENT OF FEES.—Fees for examinations under this subsection, together with reasonable traveling and other expenses incurred in order to submit to examination, may be paid out of the fund.

(6) SUSPENSION OF ANNUITY PENDING REQUIRED EXAMINATION.—If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(7) TERMINATION OF ANNUITY UPON RESTORATION OF EARNING CAPACITY.—If the annuitant receiving a disability retirement annuity is restored to earning capacity before becoming age 60, payment of the annuity terminates on reemployment by the Government or 180 days after the end of the calendar year in which earning capacity is restored, whichever is earlier. Earning capacity shall be considered to be restored if in any calendar year the income of the annuitant from wages or self-employment, or both, equals at least 80 percent of the current rate of pay for the grade and step the annuitant held at the time of retirement.

(d) TREATMENT OF RECOVERED DISABILITY ANNUITANT WHO IS NOT REINSTATED.—

(1) SEPARATION.—If a recovered or restored disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, the annuitant shall be considered, except for service credit, to have been separated within the meaning of section 234 as of the date of termination of the disability annuity.

(2) RETIREMENT.—After such termination, the recovered or restored annuitant shall be entitled to the benefits of section 234 or 241(a), except that the annuitant may elect voluntary retirement under section 233, if qualified thereunder, or may be placed by the Director in an involuntary retirement status under section 235(a), if qualified thereunder. Retirement rights under this paragraph shall be based on the provisions of this title in effect as of the date on which the disability annuity is discontinued.

(3) FURTHER DISABILITY BEFORE AGE 62.—If, based on a current medical examination, the Director determines that a recovered annuitant has, before reaching age 62, again become totally disabled due to recurrence of the disability for which the annuitant was originally retired, the annuitant's terminated disability annuity (same type and rate) shall be reinstated from the date of such medical examination. If a restored-to-earning-capacity annuitant has not medically recovered from the disability for which retired and establishes to the Director's satisfaction that the annuitant's income from wages and self-employment in any calendar year before reaching age 62 was less than 80 percent of the rate of pay for the grade and step the annuitant held at the time of retirement, the annuitant's terminated disability annuity (same type and rate) shall be reinstated from the first of the next following year. If the annuitant has been allowed an involuntary or voluntary retirement annuity in the meantime, the annuitant's reinstated disability annuity shall be substituted for it unless the annuitant elects to retain the former benefit.

(e) COORDINATION OF BENEFITS.—

(1) WORKERS' COMPENSATION.—A participant is not entitled to receive for the same period of time—

(A) an annuity under this title, and

(B) compensation for injury to, or disability of, such participant under subchapter I of chapter 81 of title 5, United States Code, other than compensation payable under section 8107 of such title.

(2) SURVIVOR ANNUITIES.—An individual is not entitled to receive an annuity under this title and a concurrent benefit under subchapter I of chapter 81 of title 5, United States Code, on account of the death of the same person.

(3) GREATER BENEFIT.—Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this title or subchapter I of chapter 81 of title 5, United States Code.

(f) OFFSET FROM SURVIVOR ANNUITY FOR WORKERS' COMPENSATION PAYMENT.—

(1) REFUND TO DEPARTMENT OF LABOR.—If an individual is entitled to an annuity under this title and the individual receives a lump-sum payment for compensation under section

8135 of title 5, United States Code, based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Secretary of Labor, shall be refunded to the Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(A) refund to the Secretary of Labor the amount representing the commuted compensation payments for the extended period; or

(B) authorize the deduction of the amount from the annuity.

(2) SOURCE OF DEDUCTION.—Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Secretary for reimbursement to the Employees' Compensation Fund.

(3) PRORATING DEDUCTION.—If the Secretary finds that the financial circumstances of an individual entitled to an annuity under this title warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Secretary determines appropriate.

**SEC. 232. [50 U.S.C. 2052] DEATH IN SERVICE.**

(a) RETURN OF CONTRIBUTIONS WHEN NO ANNUITY PAYABLE.—If a participant dies and no claim for an annuity is payable under this title, the participant's lump-sum credit and any voluntary contributions made under section 281, with interest, shall be paid in the order of precedence shown in section 241(c).

(b) SURVIVOR ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE.—

(1) IN GENERAL.—If a participant dies before separation or retirement from the Agency and is survived by a spouse or by a former spouse qualifying for a survivor annuity under section 222(b), such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with paragraphs (2) and (3) of this subsection and section 221(a), and any such surviving former spouse shall be entitled to an annuity computed in accordance with section 222(b) and paragraph (2) of this subsection as if the participant died after being entitled to an annuity under this title. The annuity of such surviving spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the death or remarriage before attaining age 55 of the surviving spouse or former spouse (subject to the payment and restoration provisions of sections 221(b)(3)(C), 221(h), and 222(b)(3)).

(2) COMPUTATION.—The annuity payable under paragraph (1) shall be computed in accordance with section 221(a), except that the computation of the annuity of the participant under such section shall be at least the smaller of (A) 40 percent of the participant's high-3 average pay, or (B) the sum obtained under such section after increasing the participant's length of

service by the difference between the participant's age at the time of death and age 60.

(3) LIMITATION.—Notwithstanding paragraph (1), if the participant had a former spouse qualifying for an annuity under section 222(b), the annuity of a surviving spouse under this section shall be subject to the limitation of section 221(b)(3)(B), and the annuity of a former spouse under this section shall be subject to the limitation of section 222(b)(4)(B).

(4) PRECEDENCE OF SECTION 224 SURVIVOR ANNUITY OVER DEATH-IN-SERVICE ANNUITY.—If a former spouse who is eligible for a death-in-service annuity under this section is or becomes eligible for an annuity under section 224, the annuity provided under this section shall not be payable and shall be superseded by the annuity under section 224.

(c) ANNUITIES FOR SURVIVING CHILDREN.—

(1) PARTICIPANTS DYING BEFORE APRIL 1, 1992.—In the case of a participant who before April 1, 1992, died before separation or retirement from the Agency and who was survived by a child or children—

(A) if the participant was survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 221(d)(3)(A); and

(B) if the participant was not survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 221(d)(3)(B).

(2) PARTICIPANTS DYING ON OR AFTER APRIL 1, 1992.—In the case of a participant who on or after April 1, 1992, dies before separation or retirement from the Agency and who is survived by a child or children—

(A) if the participant is survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 221(d)(3)(A); and

(B) if the participant is not survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid to or on behalf of each such surviving child an annuity determined under section 221(d)(3)(B).

(3) FORMER SPOUSE DEFINED.—For purposes of this subsection, the term “former spouse” includes any former wife or husband of a participant, regardless of the length of marriage or the amount of creditable service completed by the participant.

**SEC. 233. [50 U.S.C. 2053] VOLUNTARY RETIREMENT.**

(a) A participant who is at least 50 years of age and has completed 20 years of service may, on the participant's application and with the consent of the Director, be retired from the Agency and receive benefits in accordance with the provisions of section 221 if the participant has not less than 10 years of service with the Agency.

(b) A participant who has at least 25 years of service, ten years of which are with the Agency, may retire, with the consent of the Director, at any age and receive benefits in accordance with the provisions of section 221 if the Office of Personnel Management has authorized separation from service voluntarily for Agency employees under section 8336(d)(2) of title 5, United States Code, with respect to the Civil Service Retirement System or section 8414(b)(1)(B) of such title with respect to the Federal Employees' Retirement System.

**SEC. 234. [50 U.S.C. 2054] DISCONTINUED SERVICE BENEFITS.**

(a) DEFERRED ANNUITY.—A participant who separates from the Agency may, upon separation or at any time before the commencement of an annuity under this title, elect—

(1) to have the participant's contributions to the fund returned to the participant in accordance with section 241(a); or

(2) except in a case in which the Director determines that separation was based in whole or in part on the ground of disloyalty to the United States, to leave the contributions in the fund and receive an annuity, computed as prescribed in section 221, commencing at age 62.

(b) REFUND OF CONTRIBUTIONS IF FORMER PARTICIPANT DIES BEFORE AGE 62.—If a participant who qualifies under subsection (a) to receive a deferred annuity commencing at age 62 dies before reaching age 62, the participant's contributions to the fund, with interest, shall be paid in accordance with the provisions of section 241.

**SEC. 235. [50 U.S.C. 2055] MANDATORY RETIREMENT.**

(a) INVOLUNTARY RETIREMENT.—

(1) AUTHORITY OF DIRECTOR.—The Director may, in the Director's discretion, place in a retired status any participant in the system described in paragraph (2).

(2) Paragraph (1) applies with respect to any participant who has not less than 10 years of service with the Agency and who—

(A) has completed at least 25 years of service; or

(B) is at least 50 years of age and has completed at least 20 years of service.

(b) MANDATORY RETIREMENT FOR AGE.—

(1) IN GENERAL.—A participant in the system shall be automatically retired from the Agency—

(A) upon reaching age 65, in the case of a participant in the system receiving compensation under the Senior Intelligence Service pay schedule at the rate of level 4 or above; and

(B) upon reaching age 60, in the case of any other participant in the system.

(2) EFFECTIVE DATE OF RETIREMENT.—Retirement under paragraph (1) shall be effective on the last day of the month in which the participant reaches the age applicable to that participant under that paragraph.

(3) AUTHORITY FOR EXTENSION.—In any case in which the Director determines it to be in the public interest, the Director may extend the mandatory retirement date for a participant under this subsection by a period of not to exceed 5 years.

(c) **RETIREMENT BENEFITS.**—A participant retired under this section shall receive retirement benefits in accordance with section 221.

**SEC. 236. [50 U.S.C. 2056] ELIGIBILITY FOR ANNUITY.**

(a) **ONE-OUT-OF-TWO REQUIREMENT.**—A participant must complete, within the last two years before any separation from service (except a separation because of death or disability) at least one year of creditable civilian service during which the participant is subject to this title and in a pay status before the participant or the participant's survivors are eligible for an annuity under this title based on that separation.

(b) **REFUND OF CONTRIBUTIONS FOR TIME NOT ALLOWED FOR CREDIT.**—If a participant (other than a participant separated from the service because of death or disability) fails to meet the service and pay status requirement of subsection (a), any amounts deducted from the participant's pay during the period for which no eligibility is established based on the separation shall be returned to the participant on the separation.

(c) **EXCEPTION.**—Failure to meet the service and pay status requirement of subsection (a) shall not deprive the participant or the participant's survivors of any annuity to which they may be entitled under this title based on a previous separation.

## **Part E—Lump-Sum Payments**

**SEC. 241. [50 U.S.C. 2071] LUMP-SUM PAYMENTS.**

(a) **ENTITLEMENT TO LUMP-SUM CREDIT.**—Subject to section 252(d) and subsection (b) of this section, a participant who—

(1) is separated from the Agency for at least 31 consecutive days and is not transferred to employment covered by another retirement system for Government employees;

(2) files an application with the Director for payment of the lump-sum credit;

(3) is not reemployed in a position in which the participant is subject to this title at the time the participant files the application; and

(4) will not become eligible to receive an annuity under this title within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Receipt of the payment of the lump-sum credit by the former participant voids all annuity rights under this title based on the service on which the lump-sum credit is based, until the former participant is reemployed in service subject to this title.

(b) **CONDITIONS FOR PAYMENT OF LUMP-SUM CREDIT.**—

(1) **IN GENERAL.**—Whenever a former participant becomes entitled to receive payment of the lump-sum credit under subsection (a), such lump-sum credit shall be paid to the former participant and to any former spouse or former wife or husband of the former participant in accordance with paragraphs (2) through (4). The former participant's lump-sum credit shall be reduced by the amount of the lump-sum credit payable to any former spouse or former wife or husband.

(2) **PRO RATA SHARE FOR FORMER SPOUSE.**—Unless otherwise expressly provided by any spousal agreement or court

order under section 264(b), a former spouse of the former participant shall be entitled to receive a share of such participant's lump-sum credit—

(A) if married to the participant throughout the period of creditable service of the participant, equal to 50 percent of such lump-sum credit; or

(B) if not married to the participant throughout such creditable service, equal to a proportion of 50 percent of such lump-sum credit which is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant bears to the total number of days of such creditable service.

(3) SHARE FOR FORMER WIFE OR HUSBAND.—Payment of the former participant's lump-sum credit shall be subject to the terms of a court order under section 264(c) concerning any former wife or husband of the former participant if—

(A) the court order expressly relates to any portion of such lump-sum credit; and

(B) payment of the lump-sum credit would extinguish entitlement of such former wife or husband to a survivor annuity under section 226 or to any portion of the participant's annuity under section 264(c).

(4) NOTIFICATION.—A lump-sum credit may be paid to or for the benefit of a former participant—

(A) only upon written notification to (i) the current spouse, if any, (ii) any former spouse, and (iii) any former wife or husband who has a court order covered by paragraph (3); and

(B) only if the express written concurrence of the current spouse has been received by the Director.

This paragraph may be waived under circumstances described in section 221(b)(1)(D).

(c) ORDER OF PRECEDENCE OF PAYMENT.—A lump-sum payment authorized by subsection (d) or (e) of this section 281(d) and a payment of any accrued and unpaid annuity authorized by subsection (f) of this section shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon establishment of a valid claim therefor, and such payment bars recovery by any other individual:

(1) To the beneficiary or beneficiaries designated by such participant in a signed and witnessed writing received by the Director before the participant's death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed with the Director shall have no force or effect.

(2) If there is no designated beneficiary, to the surviving wife or husband of such participant.

(3) If none of the above, to the child or children of such participant and descendent of deceased children by representation.

(4) If none of the above, to the parents of such participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of such participant.

(6) If none of the above, to such other next of kin of such participant as the Director determines to be legally entitled to such payment.

(d) DEATH OF FORMER PARTICIPANT BEFORE RETIREMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), if a former participant eligible for a deferred annuity under section 234 dies before reaching age 62, such former participant's lump-sum credit shall be paid in accordance with subsection (c).

(2) LIMITATION.—In any case where there is a surviving former spouse or surviving former wife or husband of such participant who is entitled to a share of such participant's lump-sum credit under paragraphs (2) and (3) of subsection (b), the lump-sum credit payable under paragraph (1) shall be reduced by the lump-sum credit payable to such former spouse or former wife or husband.

(e) TERMINATION OF ALL ANNUITY RIGHTS.—If all annuity rights under this title based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (c).

(f) PAYMENT OF ACCRUED AND UNPAID ANNUITY WHEN RETIRED PARTICIPANT DIES.—If a retired participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (c).

(g) TERMINATION OF SURVIVOR ANNUITY.—An annuity accrued and unpaid on the termination, except by death, of the annuity of a survivor annuitant shall be paid to that individual. An annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other individual:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no executor or administrator, to such next of kin of the survivor annuitant as the Director determines to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days from the date of death of the survivor annuitant.

## Part F—Period of Service for Annuities

### SEC. 251. [50 U.S.C. 2081] COMPUTATION OF LENGTH OF SERVICE.

(a) IN GENERAL.—

(1) CREDITING SERVICE AS PARTICIPANT.—For the purposes of this title, the period of service of a participant shall be computed from the date on which the participant becomes a participant under this title.

(2) EXCLUSION OF CERTAIN PERIODS.—In computing the period of service of a participant, all periods of separation from the Agency and so much of any leave of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under chapter 81 of title 5, United States Code, and

leaves of absence granted participants while performing active and honorable service in the Armed Forces.

(3) CREDITING CERTAIN PERIODS OF SEPARATION.—A participant or former participant who returns to Government duty after a period of separation shall have included in the participant or former participant's period of service that part of the period of separation in which the participant or former participant was receiving benefits under chapter 81 of title 5, United States Code.

(b) EXTRA CREDIT FOR PERIODS SERVED AT UNHEALTHFUL POSTS OVERSEAS.—

(1) CLASSIFICATION OF CERTAIN POSTS AS UNHEALTHFUL.—The Director may from time to time establish a list of places outside the United States that, by reason of climatic or other extreme conditions, are to be classed as unhealthful posts. Such list shall be established in consultation with the Secretary of State.

(2) EXTRA CREDIT.—Each year of duty at a post on the list established under paragraph (1), inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of service of a participant under this title for the purpose of retirement. In computing such service, any fractional month shall be treated as a full month.

(3) COORDINATION WITH BENEFITS UNDER TITLE 5.—Extra credit for service at an unhealthful post may not be credited to a participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for the same service.

**SEC. 252. [50 U.S.C. 2082] PRIOR SERVICE CREDIT.**

(a) IN GENERAL.—A participant may, subject to the provisions of this section, include in the participant's period of service—

(1) civilian service in the Government before becoming a participant that would be creditable toward retirement under subchapter III of chapter 83 of title 5, United States Code (as determined under section 8332(b) of such title); and

(2) honorable active service in the Armed Forces before the date of the separation upon which eligibility for an annuity is based, or honorable active service in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer of the National Oceanic and Atmospheric Administration after June 30, 1961.

(b) LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the total service of any participant shall exclude—

(A) any period of civilian service on or after October 1, 1982, for which retirement deductions or deposits have not been made,

(B) any period of service for which a refund of contributions has been made, or

(C) any period of service for which contributions were not transferred pursuant to subsection (c)(1);

unless the participant makes a deposit to the fund in an amount equal to the percentages of basic pay received for such service as specified in the table contained in section 8334(c) of title 5, United States Code, together with interest computed in

accordance with section 8334(e) of such title. The deposit may be made in one or more installments (including by allotment from pay), as determined by the Director.

(2) EFFECT OF RETIREMENT DEDUCTIONS NOT MADE.—If a participant has not paid a deposit for civilian service performed before October 1, 1982, for which retirement deductions were not made, such participant's annuity shall be reduced by 10 percent of the deposit described in paragraph (1) remaining unpaid, unless the participant elects to eliminate the service involved for the purpose of the annuity computation.

(3) EFFECT OF REFUND OF RETIREMENT CONTRIBUTIONS.—A participant who received a refund of retirement contributions under this or any other retirement system for Government employees covering service for which the participant may be allowed credit under this title may deposit the amount received, with interest computed under paragraph (1). Credit may not be allowed for the service covered by the refund until the deposit is made, except that a participant who—

(A) separated from Government service before October 1, 1990, and received a refund of the participant's retirement contributions covering a period of service ending before October 1, 1990;

(B) is entitled to an annuity under this title (other than a disability annuity) which commences after December 1, 1992; and

(C) does not make the deposit required to receive credit for the service covered by the refund; shall be entitled to an annuity actuarially reduced in accordance with section 8334(d)(2)(B) of title 5, United States Code.

(4) ENTITLEMENT UNDER ANOTHER SYSTEM.—Credit toward retirement under the system shall not be allowed for any period of civilian service on the basis of which the participant is receiving (or will in the future be entitled to receive) an annuity under another retirement system for Government employees, unless the right to such annuity is waived and a deposit is made under paragraph (1) covering that period of service, or a transfer is made pursuant to subsection (c).

(c) TRANSFER FROM OTHER GOVERNMENT RETIREMENT SYSTEMS.—

(1) IN GENERAL.—If an employee who is under another retirement system for Government employees becomes a participant in the system by direct transfer, the Government's contributions (including interest accrued thereon computed in accordance with section 8334(e) of title 5, United States Code) under such retirement system on behalf of the employee as well as such employee's total contributions and deposits (including interest accrued thereon), except voluntary contributions, shall be transferred to the employee's credit in the fund effective as of the date such employee becomes a participant in the system.

(2) CONSENT OF EMPLOYEE.—Each such employee shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement

fund on account of service rendered before becoming a participant in the system.

(3) ADDITIONAL CONTRIBUTIONS; REFUNDS.—A participant whose contributions are transferred pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which full contributions were made to the other Government retirement fund, nor shall any refund be made to any such participant on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed for employees by section 8334(c) of title 5, United States Code, for contributions to the fund.

(d) TRANSFER TO OTHER GOVERNMENT RETIREMENT SYSTEMS.—

(1) IN GENERAL.—If a participant in the system becomes an employee under another Government retirement system by direct transfer to employment covered by such system, the Government's contributions (including interest accrued thereon computed in accordance with section 8334(e) of title 5, United States Code) to the fund on the participant's behalf as well as the participant's total contributions and deposits (including interest accrued thereon), except voluntary contributions, shall be transferred to the participant's credit in the fund of such other retirement system effective as of the date on which the participant becomes eligible to participate in such other retirement system.

(2) CONSENT OF EMPLOYEE.—Each such employee shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the fund on account of service rendered before the participant's becoming eligible for participation in that other system.

(e) PRIOR MILITARY SERVICE CREDIT.—

(1) APPLICATION TO OBTAIN CREDIT.—If a deposit required to obtain credit for prior military service described in subsection (a)(2) was not made to another Government retirement fund and transferred under subsection (c)(1), the participant may obtain credit for such military service, subject to the provisions of this subsection and subsections (f) through (h), by applying for it to the Director before retirement or separation from the Agency.

(2) EMPLOYMENT STARTING BEFORE, ON, OR AFTER OCTOBER 1, 1982.—Except as provided in paragraph (3)—

(A) the service of a participant who first became a Federal employee before October 1, 1982, shall include credit for each period of military service performed before the date of separation on which entitlement to an annuity under this title is based, subject to section 252(f); and

(B) the service of a participant who first becomes a Federal employee on or after October 1, 1982, shall include credit for—

(i) each period of military service performed before January 1, 1957, and

(ii) each period of military service performed after December 31, 1956, and before the separation on which entitlement to an annuity under this title is based, only if a deposit (with interest, if any) is made

with respect to that period, as provided in subsection (h).

(3) EFFECT OF RECEIPT OF MILITARY RETIRED PAY.—In the case of a participant who is entitled to retired pay based on a period of military service, the participant's service may not include credit for such period of military service unless the retired pay is paid—

(A) on account of a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war (as defined in section 1101 of title 38, United States Code); or

(B) under chapter 67 of title 10, United States Code.

(4) SURVIVOR ANNUITY.—Notwithstanding paragraph (3), the survivor annuity of a survivor of a participant—

(A) who was awarded retired pay based on any period of military service, and

(B) whose death occurs before separation from the Agency,

shall be computed in accordance with section 8332(c)(3) of title 5, United States Code.

(f) EFFECT OF ENTITLEMENT TO SOCIAL SECURITY BENEFITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section (except paragraph (3) of this subsection) or section 253, any military service (other than military service covered by military leave with pay from a civilian position) performed by a participant after December 1956 shall be excluded in determining the aggregate period of service on which an annuity payable under this title to such participant or to the participant's spouse, former spouse, previous spouse, or child is based, if such participant, spouse, former spouse, previous spouse, or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old-age or survivors' insurance benefits under section 202 of the Social Security Act (42 U.S.C. 402), based on such participant's wages and self-employment income. If the military service is not excluded under the preceding sentence, but upon attaining age 62, the participant or spouse, former spouse, or previous spouse becomes entitled (or would upon proper application be entitled) to such benefits, the aggregate period of service on which the annuity is based shall be redetermined, effective as of the first day of the month in which the participant or spouse, former spouse, or previous spouse attains age 62, so as to exclude such service.

(2) LIMITATION.—The provisions of paragraph (1) relating to credit for military service do not apply to—

(A) any period of military service of a participant with respect to which the participant has made a deposit with interest, if any, under subsection (h); or

(B) the military service of any participant described in subsection (e)(2)(B).

(3) EFFECT OF ENTITLEMENT BEFORE SEPTEMBER 8, 1982.—

(A) The annuity recomputation required by paragraph (1) shall

not apply to any participant who was entitled to an annuity under this title on or before September 8, 1982, or who is entitled to a deferred annuity based on separation from the Agency occurring on or before such date. Instead of an annuity recomputation, the annuity of such participant shall be reduced at age 62 by an amount equal to a fraction of the participant's old-age or survivors' insurance benefits under section 202 of the Social Security Act. The reduction shall be determined by multiplying the participant's monthly Social Security benefit by a fraction, the numerator of which is the participant's total military wages and deemed additional wages (within the meaning of section 229 of the Social Security Act (42 U.S.C. 429)) that were subject to Social Security deductions and the denominator of which is the total of all the participant's wages, including military wages, and all self-employment income that were subject to Social Security deductions before the calendar year in which the determination month occurs.

(B) The reduction determined in accordance with subparagraph (A) shall not be greater than the reduction that would be required under paragraph (1) if such paragraph applied to the participant. The new formula shall be applicable to any annuity payment payable after October 1, 1982, including annuity payments to participants who had previously reached age 62 and whose annuities had already been recomputed.

(C) For purposes of this paragraph, the term "determination month" means—

(i) the first month for which the participant is entitled to old-age or survivors' insurance benefits (or would be entitled to such benefits upon application therefor); or

(ii) October 1982, in the case of any participant entitled to such benefits for that month.

(g) DEPOSITS PAID BY SURVIVORS.—For the purpose of survivor annuities, deposits authorized by subsections (b) and (h) may also be made by the survivor of a participant.

(h)(1)(A) Each participant who has performed military service before the date of separation on which entitlement to an annuity under this title is based may pay to the Agency an amount equal to 7 percent of the amount of basic pay paid under section 204 of title 37, United States Code, to the participant for each period of military service after December 1956; except, the amount to be paid for military service performed beginning on January 1, 1999, through December 31, 2000, shall be as follows:

7.25 percent of basic pay.	January 1, 1999, to December 31, 1999.
7.4 percent of basic pay.	January 1, 2000, to December 31, 2000.

(B) The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or, if the Director determines sufficient evidence has not been provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Director under paragraph (4).

(2) Any deposit made under paragraph (1) more than two years after the later of—

(A) October 1, 1983, or

(B) the date on which the participant making the deposit first becomes an employee of the Federal Government,

shall include interest on such amount computed and compounded annually beginning on the date of expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e) of title 5, United States Code.

(3) Any payment received by the Director under this subsection shall be deposited in the Treasury of the United States to the credit of the fund.

(4) The provisions of section 221(k) shall apply with respect to such information as the Director determines to be necessary for the administration of this subsection in the same manner that such section applies concerning information described in that section.

**SEC. 253. [50 U.S.C. 2083] CREDIT FOR SERVICE WHILE ON MILITARY LEAVE.**

(a) GENERAL RULE.—A participant who, during the period of any war or of any national emergency as proclaimed by the President or declared by the Congress, leaves the participant's position in the Agency to enter military service shall not be considered, for purposes of this title, as separated from the participant's position in the Agency by reason of such military service, unless the participant applies for and receives a refund of contributions under this title. Such a participant may not be considered as retaining such position in the Agency after December 31, 1956, or upon the expiration of five years of such military service, whichever is later.

(b) WAIVER OF CONTRIBUTIONS.—Except to the extent provided under section 252(e) or 252(h), contributions shall not be required covering periods of leave of absence from the Agency granted a participant while performing active service in the Armed Forces.

## Part G—Moneys

**SEC. 261. [50 U.S.C. 2091] ESTIMATE OF APPROPRIATIONS NEEDED.**

(a) ESTIMATES OF ANNUAL APPROPRIATIONS.—The Director shall prepare the estimates of the annual appropriations required to be made to the fund.

(b) ACTUARIAL VALUATIONS.—The Director shall cause to be made actuarial valuations of the fund at such intervals as the Director determines to be necessary, but not less often than every five years.

(c) CHANGES IN LAW AFFECTING ACTUARIAL STATUS OF FUND.—Any statute which authorizes—

(1) new or increased benefits payable from the fund under this title, including annuity increases other than under section 291;

(2) extension of the coverage of this title to new groups of employees; or

(3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the fund in order to provide funding for the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the system and with the first payment thereof due as of the end of the fiscal year in which such new or liberalized benefit, extension of coverage, or increase in pay is effective.

(d) AUTHORIZATION.—There is hereby authorized to be appropriated to the fund for each fiscal year such amounts as may be necessary to meet the amount of normal cost for each year that is not met by contributions under section 211(a).

(e) UNFUNDED LIABILITY; CREDIT ALLOWED FOR MILITARY SERVICE.—There is hereby authorized to be appropriated to the fund for each fiscal year such sums as may be necessary to provide the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the system; and

(2) that portion of disbursement for annuities for that year that the Director estimates is attributable to credit allowed for military service,

less an amount determined by the Director to be appropriate to reflect the value of the deposits made to the credit of the fund under section 252(h).

**SEC. 262. [50 U.S.C. 2092] INVESTMENT OF MONEYS IN THE FUND.**

The Director may, with the approval of the Secretary of the Treasury, invest from time to time in interest-bearing securities of the United States such portions of the fund as in the Director's judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances from the fund. The income derived from such investments shall be credited to and constitute a part of the fund.

**SEC. 263. [50 U.S.C. 2093] PAYMENT OF BENEFITS.**

(a) ANNUITIES STATED AS ANNUAL AMOUNTS.—Each annuity is stated as an annual amount,  $\frac{1}{12}$  of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b) COMMENCEMENT OF ANNUITY.—

(1) COMMENCEMENT OF ANNUITY FOR PARTICIPANTS GENERALLY.—Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after separation from the Agency or after pay ceases and the service and age requirements for title to an annuity are met.

(2) EXCEPTIONS.—The annuity of—

(A) a participant involuntarily separated from the Agency;

(B) a participant retiring under section 231 due to a disability; and

(C) a participant who serves 3 days or less in the month of retirement;

shall commence on the day after separation from the Agency or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(3) OTHER ANNUITIES.—Any other annuity payable from the fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(c) TERMINATION OF ANNUITY.—An annuity payable from the fund shall terminate—

(1) in the case of a retired participant, on the day death or any other terminating event provided by this title occurs; or

(2) in the case of a former spouse or a survivor, on the last day of the month before death or any other terminating event occurs.

(d) APPLICATION FOR SURVIVOR ANNUITIES.—The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Director may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to the individual's estate.

(e) WAIVER OF ANNUITY.—An individual entitled to an annuity from the fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Director. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver is in effect.

(f) LIMITATIONS.—

(1) APPLICATION BEFORE 115TH ANNIVERSARY.—No payment shall be made from the fund unless an application for benefits based on the service of the participant is received by the Director before the 115th anniversary of the participant's birth.

(2) APPLICATION WITHIN 30 YEARS.—Notwithstanding paragraph (1), after the death of a participant or retired participant, no benefit based on that participant's service may be paid from the fund unless an application for the benefit is received by the Director within 30 years after the death or other event which gives rise to eligibility for the benefit.

(g) WITHHOLDING OF STATE INCOME TAX FROM ANNUITIES.—

(1) AGREEMENTS WITH STATES.—The Director shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Director shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(2) LIMITATION ON MULTIPLE REQUESTS.—An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests during any one calendar year.

(3) CHANGE IN STATE DESIGNATION.—Subject to paragraph (2), an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with

such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Director, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Director.

(4) GENERAL PROVISIONS.—This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements of the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Director may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Director shall be repaid by the State in accordance with regulations prescribed by the Director.

(5) DEFINITION.—For the purpose of this subsection, the term “State” includes the District of Columbia and any territory or possession of the United States.

**SEC. 264. [50 U.S.C. 2094] ATTACHMENT OF MONEYS.**

(a) EXEMPTION FROM LEGAL PROCESS.—Except as provided in subsections (b), (c), and (e), none of the moneys mentioned in this title shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) PAYMENT TO FORMER SPOUSES UNDER COURT ORDER OR SPOUSAL AGREEMENT.—In the case of any participant, former participant, or retired participant who has a former spouse who is covered by a court order or who is a party to a spousal agreement—

(1) any right of the former spouse to any annuity under section 222(a) in connection with any retirement or disability annuity of the participant, and the amount of any such annuity;

(2) any right of the former spouse of a participant or retired participant to a survivor annuity under section 222(b) or 222(c), and the amount of any such annuity; and

(3) any right of the former spouse of a former participant to any payment of a lump-sum credit under section 241(b), and the amount of any such payment;

shall be determined in accordance with that spousal agreement or court order, if and to the extent expressly provided for in the terms of the spousal agreement or court order that are not inconsistent with the requirements of this title.

(c) OTHER PAYMENTS UNDER COURT ORDERS.—Payments under this title that would otherwise be made to a participant, former participant, or retired participant based upon that participant's service shall be paid, in whole or in part, by the Director to another individual if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation.

(d) PROSPECTIVE PAYMENTS; BAR TO RECOVERY.—

(1) Subsections (b) and (c) apply only to payments made under this title for periods beginning after the date of receipt by the Director of written notice of such decree, order, or agreement and such additional information and documentation as the Director may require.

(2) Any payment under subsection (b) or (c) to an individual bars recovery by any other individual.

(e) ALLOTMENTS.—An individual entitled to an annuity from the fund may make allotments or assignments of amounts from such annuity for such purposes as the Director considers appropriate.

**SEC. 265. [50 U.S.C. 2095] RECOVERY OF PAYMENTS.**

Recovery of payments under this title may not be made from an individual when, in the judgment of the Director, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money payable pursuant to this title on account of a certification or payment made by a former employee of the Agency in the discharge of the former employee's official duties may be made if the Director certifies that the certification or payment involved fraud on the part of the former employee.

## **Part H—Retired Participants Recalled, Reinstated, or Reappointed in the Agency or Reemployed in the Government**

**SEC. 271. [50 U.S.C. 2111] RECALL.**

(a) AUTHORITY TO RECALL.—The Director may, with the consent of a retired participant, recall that participant to service in the Agency whenever the Director determines that such recall is in the public interest.

(b) PAY OF RETIRED PARTICIPANT WHILE SERVING.—A retired participant recalled to duty in the Agency under subsection (a) or reinstated or reappointed in accordance with section 231(b) shall, while so serving, be entitled, in lieu of the retired participant's annuity, to the full basic pay of the grade in which the retired participant is serving. During such service, the retired participant shall make contributions to the fund in accordance with section 211.

(c) RECOMPUTATION OF ANNUITY.—When the retired participant reverts to retired status, the annuity of the retired participant shall be redetermined in accordance with section 221.

**SEC. 272. [50 U.S.C. 2112] REEMPLOYMENT.**

A participant retired under this title shall not, by reason of that retired status, be barred from employment in Federal Government service in any appointive position for which the participant is qualified.

**SEC. 273. [50 U.S.C. 2113] REEMPLOYMENT COMPENSATION.**

(a) DEDUCTION FROM BASIC PAY.—An annuitant who has retired under this title and who is reemployed in the Federal Government service in any appointive position (either on a part-time or full-time basis) shall be entitled to receive the annuity payable

under this title, but there shall be deducted from the annuitant's basic pay a sum equal to the annuity allocable to the period of actual employment.

(b) **RECOVERY OF OVERPAYMENTS.**—In the event of an overpayment under this section, the amount of the overpayment shall be recovered by withholding the amount involved from the basic pay payable to such reemployed annuitant or from any other moneys, including the annuitant's annuity, payable in accordance with this title.

(c) **DEPOSIT IN THE FUND.**—Sums deducted from the basic pay of a reemployed annuitant under this section shall be deposited in the Treasury of the United States to the credit of the fund.

## Part I—Voluntary Contributions

### SEC. 281. [50 U.S.C. 2121] VOLUNTARY CONTRIBUTIONS.

(a) **AUTHORITY FOR VOLUNTARY CONTRIBUTIONS.**—

(1) **IN GENERAL.**—Under such regulations as may be prescribed by the Director, a participant may voluntarily contribute additional sums in multiples of one percent of the participant's basic pay, but not in excess of 10 percent of such basic pay.

(2) **INTEREST.**—The voluntary contribution account in each case is the sum of unrefunded contributions, plus interest—

(A) for periods before January 1, 1985, at 3 percent a year; and

(B) for periods on or after January 1, 1985, at the rate computed under section 8334(e) of title 5, United States Code,

compounded annually to the date of election under subsection (b) or the date of payment under subsection (d).

(b) **TREATMENT OF VOLUNTARY CONTRIBUTIONS.**—Effective on the date of retirement and at the election of the participant, the participant's account shall be—

(1) returned in a lump sum;

(2) used to purchase an additional life annuity;

(3) used to purchase an additional life annuity for the participant and to provide for a cash payment on the participant's death to a beneficiary; or

(4) used to purchase an additional life annuity for the participant and a life annuity commencing on the participant's death payable to a beneficiary, with a guaranteed return to the beneficiary or the beneficiary's legal representative of an amount equal to the cash payment referred to in paragraph (3).

In the case of a benefit provided under paragraph (3) or (4), the participant shall notify the Director in writing of the name of the beneficiary of the cash payment or life annuity to be paid upon the participant's death.

(c) **VALUE OF BENEFITS.**—The benefits provided by subsection (b) (2), (3), or (4) shall be actuarially equivalent in value to the payment provided for in subsection (b)(1) and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Director.

(d) LUMP-SUM PAYMENT.—A voluntary contribution account shall be paid in a lump sum at such time as the participant dies or separates from the Agency without entitlement to an annuity. In the case of death, the account shall be paid in the order of precedence specified in section 241(c).

(e) BENEFITS IN ADDITION TO OTHER BENEFITS.—Any benefit payable to a participant or to the participant's beneficiary with respect to the additional contributions provided under this section shall be in addition to benefits otherwise provided under this title.

## Part J—Cost-of-Living Adjustment of Annuities

### SEC. 291. [50 U.S.C. 2131] COST-OF-LIVING ADJUSTMENT OF ANNUITIES.

(a) IN GENERAL.—Each annuity payable from the fund shall be adjusted as follows:

(1) Each cost-of-living annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5, United States Code.

(2) A cost-of-living increase made under paragraph (1) shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Except as provided in subsection (b), each such increase shall be applied to each annuity payable from the fund which has a commencing date not later than the effective date of the increase.

(b) ELIGIBILITY.—Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:

(1) The first cost-of-living increase (if any) made under subsection (a) to an annuity which is payable from the fund to a participant who retires, to the surviving spouse, former spouse, or previous spouse of a participant who dies in service, or to the surviving spouse, former spouse, previous spouse, or insurable interest designee of a deceased annuitant whose annuity has not been increased under this subsection or subsection (a), shall be equal to the product (adjusted to the nearest  $\frac{1}{10}$  of one percent) of—

(A)  $\frac{1}{12}$  of the applicable percent change computed under subsection (a), multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the fund before the effective date of the increase, or

(ii) in the case of a surviving spouse, former spouse, previous spouse, or insurable interest designee of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled to an annuity under section 221(d)) shall be increased

by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing the annuity of a child under section 221(d) that commences after October 31, 1969, the dollar amounts specified in section 221(d)(3) shall each be increased by the total percentage increases allowed and in force under this section on or after such day and, in the case of a deceased annuitant, the percentages specified in that section shall be increased by the total percent allowed and in force to the annuitant under this section on or after such day.

(c) LIMITATION.—An annuity increase provided by this section may not be computed on any additional annuity purchased at retirement by voluntary contributions.

(d) ROUNDING TO NEXT LOWER DOLLAR.—The monthly annuity installment, after adjustment under this section, shall be rounded to the next lowest dollar, except that such installment shall, after adjustment, reflect an increase of at least \$1.

(e) LIMITATION ON MAXIMUM AMOUNT OF ANNUITY.—

(1) IN GENERAL.—An annuity shall not be increased by reason of an adjustment under this section to an amount which exceeds the greater of—

(A) the maximum pay payable for GS-15 30 days before the effective date of the adjustment under this section; or

(B) the final pay (or average pay, if higher) of the participant with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in the rates of pay of the General Schedule under subchapter I of chapter 53 of title 5, United States Code, during the period—

(i) beginning on the date on which the annuity commenced (or, in the case of a survivor of the retired participant, the date on which the participant's annuity commenced), and

(ii) ending on the effective date of the adjustment under this section.

(2) PAY DEFINED.—For purposes of paragraph (1), the term “pay” means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds.

## **Part K—Conformity With Civil Service Retirement System**

### **SEC. 292. [50 U.S.C. 2141] AUTHORITY TO MAINTAIN EXISTING AREAS OF CONFORMITY BETWEEN CIVIL SERVICE AND CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEMS.**

(a) PRESIDENTIAL AUTHORITY.—

(1) CONFORMITY TO CSRS BY EXECUTIVE ORDER.—Whenever the President determines that it would be appropriate for the purpose of maintaining existing conformity between the Civil Service Retirement and Disability System and the Central Intelligence Agency Retirement and Disability System with re-

spect to substantially identical provisions, the President may, by Executive order, extend to current or former participants in the Central Intelligence Agency Retirement and Disability System, or to their survivors, a provision of law enacted after January 1, 1975, which—

(A) amends subchapter III of chapter 83 of title 5, United States Code, and is applicable to civil service employees generally; or

(B) otherwise affects current or former participants in the Civil Service Retirement and Disability System, or their survivors.

(2) EXTENSION TO CIARDS.—Any such order shall extend such provision of law so that it applies in like manner with respect to such Central Intelligence Agency Retirement and Disability System participants, former participants, or survivors.

(3) LEGAL STATUS.—Any such order shall have the force and effect of law.

(4) EFFECTIVE DATE.—Any such order may be given retroactive effect to a date not earlier than the effective date of the corresponding provision of law applicable to employees under the Civil Service Retirement System.

(b) EFFECT OF EXECUTIVE ORDER.—Provisions of an Executive order issued pursuant to this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) provisions of law enacted before the effective date of the Executive order; and

(2) any prior provision of an Executive order issued under this section.

**SEC. 293. [50 U.S.C. 2142] THRIFT SAVINGS PLAN PARTICIPATION.**

(a) ELIGIBILITY FOR THRIFT SAVINGS PLAN.—Participants in the system shall be deemed to be employees for the purposes of section 8351 of title 5, United States Code.

(b) MANAGEMENT OF THRIFT SAVINGS PLAN ACCOUNTS BY DIRECTOR.—Subsections (k) and (m) of section 8461 of title 5, United States Code, shall apply with respect to contributions made by participants to the Thrift Savings Fund under section 8351 of such title and to earnings attributable to the investment of such contributions.

**SEC. 294. [50 U.S.C. 2143] ALTERNATIVE FORMS OF ANNUITIES.**

(a) AUTHORITY FOR ALTERNATIVE FORM OF ANNUITY.—The Director shall prescribe regulations under which any participant who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this title (other than under section 231), elect annuity benefits under this section instead of any other benefits under this title (including any survivor benefits under this title) based on the service of the participant creditable under this title.

(b) BASIS FOR ALTERNATIVE FORMS OF ANNUITY.—The regulations and alternative forms of annuity shall, to the maximum extent practicable, meet the requirements prescribed in section 8343a of title 5, United States Code.

(c) LUMP-SUM CREDIT.—Any lump-sum credit provided pursuant to an election under subsection (a) shall not preclude an indi-

vidual from receiving other benefits provided under that subsection.

(d) **SUBMISSION OF REGULATIONS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.**—The Director shall submit the regulations prescribed under subsection (a) to the congressional intelligence committees before the regulations take effect.

**SEC. 295. [50 U.S.C. 2144] PAYMENTS FROM CIARDS FUND FOR PORTIONS OF CERTAIN CIVIL SERVICE RETIREMENT SYSTEM ANNUITIES.**

The amount of the increase in any annuity that results from the application of section 18 of the Central Intelligence Agency Act of 1949, if and when such increase is based on an individual's overseas service as an employee of the Central Intelligence Agency, shall be paid from the fund.

### **TITLE III—PARTICIPATION IN THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM**

**SEC. 301. [50 U.S.C. 2151] APPLICATION OF FEDERAL EMPLOYEES' RETIREMENT SYSTEM TO AGENCY EMPLOYEES.**

(a) **GENERAL RULE.**—Except as provided in subsections (b) and (c), all employees of the Agency, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, shall be subject to chapter 84 of title 5, United States Code.

(b) **EXCEPTION FOR PRE-1984 EMPLOYEES.**—Participants in the Central Intelligence Agency Retirement and Disability System who were participants in such system on or before December 31, 1983, and who have not had a break in service in excess of one year since that date, are not subject to chapter 84 of title 5, United States Code, without regard to whether they are subject to title II of the Social Security Act.

(c) **NONAPPLICABILITY OF FERS TO CERTAIN EMPLOYEES.**—

(1) The provisions of chapter 84 of title 5, United States Code, shall not apply with respect to—

(A) any individual who separates, or who has separated, from Federal Government service after having been an employee of the Agency subject to title II of this Act; and

(B) any employee of the Agency having at least 5 years of civilian service which was performed before January 1, 1987, and is creditable under title II of this Act (determined without regard to any deposit or redeposit requirement under subchapter III of chapter 83 of title 5, United States Code, or under title II of this Act, or any requirement that the individual become subject to such subchapter or to title II of this Act after performing the service involved).

(2) Paragraph (1) shall not apply with respect to an individual who has elected under regulations prescribed under section 307 to become subject to chapter 84 of title 5, United States Code, to the extent provided in such regulations.

(3) An individual described in paragraph (1) shall be deemed to be an individual excluded under section 8402(b)(2) of title 5, United States Code.

(d) ELECTION TO BECOME SUBJECT TO FERS.—An employee who is designated as a participant in the Central Intelligence Agency Retirement and Disability System after December 31, 1987, pursuant to section 203 may elect to become subject to chapter 84 of title 5, United States Code. Such election—

(1) shall not be effective unless it is made during the six-month period beginning on the date on which the employee is so designated;

(2) shall take effect beginning with the first pay period beginning after the date of the election; and

(3) shall be irrevocable.

(e) SPECIAL RULES.—The application of the provisions of chapter 84 of title 5, United States Code, to an employee referred to in subsection (a) shall be subject to the exceptions and special rules provided in this title. Any provision of that chapter which is inconsistent with a special rule provided in this title shall not apply to such employees.

**SEC. 302. [50 U.S.C. 2152] SPECIAL RULES RELATING TO SECTION 203 CRITERIA EMPLOYEES.**

(a) IN GENERAL.—Except as otherwise provided in this section, in the application of chapter 84 of title 5, United States Code, to an employee of the Agency who is subject to such chapter and is designated by the Director under the criteria prescribed in section 203, such employee shall be treated for purposes of determining such employee's retirement benefits and obligations under such chapter as if the employee were a law enforcement officer (as defined in section 8401(17) of title 5, United States Code).

(b) VOLUNTARY AND MANDATORY RETIREMENT.—The provisions of sections 233 and 235 shall apply to employees referred to in subsection (a), except that the retirement benefits shall be determined under chapter 84 of title 5, United States Code.

(c) RECALL.—

(1) Except as provided in paragraph (2), section 271 shall apply to an employee referred to in subsection (a).

(2) Contributions during recall service shall be made as provided in section 8422 of title 5, United States Code.

(3) When an employee recalled under this subsection reverts to a retired status, the annuity of such employee shall be redetermined under the provisions of chapter 84 of title 5, United States Code.

**SEC. 303. [50 U.S.C. 2153] SPECIAL RULES FOR OTHER EMPLOYEES FOR SERVICE ABROAD.**

(a) SPECIAL COMPUTATION RULE.—Notwithstanding any provision of chapter 84 of title 5, United States Code, the annuity under subchapter II of such chapter of a retired employee of the Agency who is not designated under section 302(a) and who has served abroad as an employee of the Agency after December 31, 1986, shall be computed as provided in subsection (b).

(b) COMPUTATION.—

(1) SERVICE ABROAD.—The portion of the annuity relating to such service abroad shall be computed as provided in section 8415(d) of title 5, United States Code.

(2) OTHER SERVICE.—The portions of the annuity relating to other creditable service shall be computed as provided in section 8415 of such title that is applicable to such service under the conditions prescribed in chapter 84 of such title.

**SEC. 304. [50 U.S.C. 2154] SPECIAL RULES FOR FORMER SPOUSES.**

(a) GENERAL RULE.—Except as otherwise specifically provided in this section, the provisions of chapter 84 of title 5, United States Code, shall apply in the case of an employee of the Agency who is subject to chapter 84 of title 5, United States Code, and who has a former spouse (as defined in section 8401(12) of title 5, United States Code) or a qualified former spouse.

(b) DEFINITIONS.—For purposes of this section:

(1) EMPLOYEE.—The term “employee” means an employee of the Agency who is subject to chapter 84 of title 5, United States Code, including an employee referred to in section 302(a).

(2) QUALIFIED FORMER SPOUSE.—The term “qualified former spouse” means a former spouse of an employee or retired employee who—

(A) in the case of a former spouse whose divorce from such employee became final on or before December 4, 1991, was married to such employee for not less than 10 years during periods of the employee’s service which are creditable under section 8411 of title 5, United States Code, at least 5 years of which were spent outside the United States by both the employee and the former spouse during the employee’s service with the Agency; and

(B) in the case of a former spouse whose divorce from such employee becomes final after December 4, 1991, was married to such employee for not less than 10 years during periods of the employee’s service which are creditable under section 8411 of title 5, United States Code, at least 5 years of which were spent by the employee outside the United States during the employee’s service with the Agency or otherwise in a position the duties of which qualified the employee for designation by the Director under the criteria prescribed in section 203.

(3) PRO RATA SHARE.—The term “pro rata share” means the percentage that is equal to (A) the number of days of the marriage of the qualified former spouse to the employee during the employee’s periods of creditable service under chapter 84 of title 5, United States Code, divided by (B) the total number of days of the employee’s creditable service.

(4) SPOUSAL AGREEMENT.—The term “spousal agreement” means an agreement between an employee, former employee, or retired employee and such employee’s spouse or qualified former spouse that—

(A) is in writing, is signed by the parties, and is notarized;

(B) has not been modified by court order; and

(C) has been authenticated by the Director.

(5) COURT ORDER.—The term “court order” means any court decree of divorce, annulment or legal separation, or any court order or court-approved property settlement agreement incident to such court decree of divorce, annulment, or legal separation.

(c) ENTITLEMENT OF QUALIFIED FORMER SPOUSE TO RETIREMENT BENEFITS.—

(1) ENTITLEMENT.—

(A) IN GENERAL.—Unless otherwise expressly provided by a spousal agreement or court order governing disposition of benefits payable under subchapter II or V of chapter 84 of title 5, United States Code, a qualified former spouse of an employee is entitled to a share (determined under subparagraph (B)) of all benefits otherwise payable to such employee under subchapter II or V of chapter 84 of title 5, United States Code.

(B) AMOUNT OF SHARE.—The share referred to in subparagraph (A) equals—

(i) 50 percent, if the qualified former spouse was married to the employee throughout the entire period of the employee’s service which is creditable under chapter 84 of title 50, United States Code; or

(ii) a pro rata share of 50 percent, if the qualified former spouse was not married to the employee throughout such creditable service.

(2) ANNUITY SUPPLEMENT.—The benefits payable to an employee under subchapter II of chapter 84 of title 5, United States Code, shall include, for purposes of this subsection, any annuity supplement payable to such employee under sections 8421 and 8421a of such title.

(3) DISQUALIFICATION UPON REMARRIAGE BEFORE AGE 55.—A qualified former spouse shall not be entitled to any benefit under this subsection if, before the commencement of any benefit, the qualified former spouse remarries before becoming 55 years of age.

(4) COMMENCEMENT AND TERMINATION.—

(A) COMMENCEMENT.—The benefits of a qualified former spouse under this subsection commence on the later of—

(i) the day on which the employee upon whose service the benefits are based becomes entitled to the benefits; or

(ii) the first day of the second month beginning after the date on which the Director receives written notice of the court order or spousal agreement, together with such additional information or documentation as the Director may prescribe.

(B) TERMINATION.—The benefits of the qualified former spouse and the right thereto terminate on—

(i) the last day of the month before the qualified former spouse remarries before 55 years of age or dies; or

(ii) the date on which the retired employee’s benefits terminate (except in the case of benefits subject to paragraph (5)(B)).

(5) PAYMENTS TO RETIRED EMPLOYEES.—

(A) CALCULATION OF SURVIVOR ANNUITY.—Any reduction in payments to a retired employee as a result of payments to a qualified former spouse under this subsection shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse (qualified or otherwise), or other survivor under chapter 84 of title 5, United States Code, and

(ii) any reduction in the annuity of the retired employee to provide survivor benefits under subsection (d) of this section or under sections 8442 or 8445 of title 5, United States Code.

(B) REDUCTION IN BASIC PAY UPON RECALL TO SERVICE.—If a retired employee whose annuity is reduced under paragraph (1) is recalled to service under section 302(c), the basic pay of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

(6) SPECIAL RULES FOR DISABILITY ANNUITANTS.—Notwithstanding paragraphs (1) and (4), in the case of any qualified former spouse of a disability annuitant—

(A) the annuity of such former spouse shall commence on the date on which the employee would qualify, on the basis of the employee's creditable service, for benefits under subchapter II of chapter 84 of title 5, United States Code, or on the date on which the disability annuity begins, whichever is later; and

(B) the amount of the annuity of the qualified former spouse shall be calculated on the basis of the benefits for which the employee would otherwise qualify under subchapter II of chapter 84 of such title.

(7) PRO RATA SHARE IN CASE OF EMPLOYEES TRANSFERRED TO FERS.—Notwithstanding paragraph (1)(B), in the case of an employee who has elected to become subject to chapter 84 of title 5, United States Code, the share of such employee's qualified former spouse shall equal the sum of—

(A) 50 percent of the employee's annuity under subchapter III of chapter 83 of title 5, United States Code, or under title II of this Act (computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or section 307 of this Act), multiplied by the proportion that the number of days of marriage during the period of the employee's creditable service before the effective date of the election to transfer bears to the employee's total creditable service before such effective date; and

(B) if applicable, 50 percent of the employee's benefits under chapter 84 of title 5, United States Code, or section 302(a) of this Act (computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or section 307 of this Act), multiplied by the proportion that the number of days of marriage during the period of the employee's creditable service on and after the effective

tive date of the election to transfer bears to the employee's total creditable service after such effective date.

(8) TREATMENT OF PRO RATA SHARE UNDER INTERNAL REVENUE CODE.—For purposes of the Internal Revenue Code of 1986, payments to a qualified former spouse under this subsection shall be treated as income to the qualified former spouse and not to the employee.

(d) QUALIFIED FORMER SPOUSE SURVIVOR BENEFITS.—

(1) ENTITLEMENT.—

(A) IN GENERAL.—Subject to an election under section 8416(a) of title 5, United States Code, and unless otherwise expressly provided by any spousal agreement or court order governing survivor benefits payable under this subsection to a qualified former spouse, such former spouse is entitled to a share, determined under subparagraph (B), of all survivor benefits that would otherwise be payable under subchapter IV of chapter 84 of title 5, United States Code, to an eligible surviving spouse of the employee.

(B) AMOUNT OF SHARE.—The share referred to in subparagraph (A) equals—

(i) 100 percent, if the qualified former spouse was married to the employee throughout the entire period of the employee's service which is creditable under chapter 84 of title 5, United States Code; or

(ii) a pro rata share of 100 percent, if the qualified former spouse was not married to the employee throughout such creditable service.

(2) SURVIVOR BENEFITS.—

(A) The survivor benefits payable under this subsection to a qualified former spouse shall include the amount payable under section 8442(b)(1)(A) of title 5, United States Code, and any supplementary annuity under section 8442(f) of such title that would be payable if such former spouse were a widow or widower entitled to an annuity under such section.

(B) Any calculation under section 8442(f) of title 5, United States Code, of the supplementary annuity payable to a widow or widower of an employee referred to in section 302(a) shall be based on an "assumed CIARDS annuity" rather than an "assumed CSRS annuity" as stated in section 8442(f) of such title. For the purpose of this subparagraph, the term "assumed CIARDS annuity" means the amount of the survivor annuity to which the widow or widower would be entitled under title II of this Act based on the service of the deceased annuitant determined under section 8442(f)(5) of such title.

(3) DISQUALIFICATION UPON REMARRIAGE BEFORE AGE 55.—A qualified former spouse shall not be entitled to any benefit under this subsection if, before commencement of any benefit, the qualified former spouse remarries before becoming 55 years of age.

(4) RESTORATION.—If the survivor annuity payable under this subsection to a surviving qualified former spouse is terminated because of remarriage before becoming age 55, the annuity shall be restored at the same rate commencing on the date

such remarriage is dissolved by death, divorce, or annulment, if—

(A) such former spouse elects to receive this survivor annuity instead of any other survivor benefit to which such former spouse may be entitled under subchapter IV of chapter 84 of title 5, United States Code, or under another retirement system for Government employees by reason of the remarriage; and

(B) any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund.

(5) MODIFICATION OF COURT ORDER OR SPOUSAL AGREEMENT.—A modification in a court order or spousal agreement to adjust a qualified former spouse's share of the survivor benefits shall not be effective if issued after the retirement or death of the employee, former employee, or annuitant, whichever occurs first.

(6) EFFECT OF TERMINATION OF QUALIFIED FORMER SPOUSE'S ENTITLEMENT.—After a qualified former spouse of a retired employee remarries before becoming age 55 or dies, the reduction in the retired employee's annuity for the purpose of providing a survivor annuity for such former spouse shall be terminated. The annuitant may elect, in a signed writing received by the Director within 2 years after the qualified former spouse's remarriage or death, to continue the reduction in order to provide or increase the survivor annuity for such annuitant's spouse. The annuitant making such election shall pay a deposit in accordance with the provisions of section 8418 of title 5, United States Code.

(7) PRO RATA SHARE IN CASE OF EMPLOYEES TRANSFERRED TO FERS.—Notwithstanding paragraph (1)(B), in the case of an employee who has elected to become subject to chapter 84 of title 5, United States Code, the share of such employee's qualified former spouse to survivor benefits shall equal the sum of—

(A) 50 percent of the employee's annuity under subchapter III of chapter 83 of title 5, United States Code, or under title II of this Act (computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or section 307 of this Act), multiplied by the proportion that the number of days of marriage during the period of the employee's creditable service before the effective date of the election to transfer bears to the employee's total creditable service before such effective date; and

(B) if applicable—

(i) 50 percent of the employee's annuity under chapter 84 of title 5, United States Code, or section 302(a) of this Act (computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or section 307 of this Act), plus

(ii) the survivor benefits referred to in subsection

(d)(2)(A),

multiplied by the proportion that the number of days of marriage during the period of the employee's creditable service on and after the effective date of the election to

transfer bears to the employee's total creditable service after such effective date.

(e) QUALIFIED FORMER SPOUSE THRIFT SAVINGS PLAN BENEFIT.—

(1) ENTITLEMENT.—

(A) IN GENERAL.—Unless otherwise expressly provided by a spousal agreement or court order governing disposition of the balance of an account in the Thrift Savings Fund under subchapter III of chapter 84 of title 5, United States Code, a qualified former spouse of an employee is entitled to a share (determined under subparagraph (B)) of the balance in the employee's account in the Thrift Savings Fund on the date the divorce of the qualified former spouse and employee becomes final.

(B) AMOUNT OF SHARE.—The share referred to in subparagraph (A) equals 50 percent of the employee's account balance in the Thrift Savings Fund that accrued during the period of marriage. For purposes of this subsection, the employee's account balance shall not include the amount of any outstanding loan.

(2) PAYMENT OF BENEFIT.—

(A) TIME OF PAYMENT.—The entitlement of a qualified former spouse under paragraph (1) shall be effective on the date the divorce of the qualified former spouse and employee becomes final. The qualified former spouse's benefit shall be payable after the date on which the Director receives the divorce decree or any applicable court order or spousal agreement, together with such additional information or documentation as the Director may require.

(B) METHOD OF PAYMENT.—The qualified former spouse's benefit under this subsection shall be paid in a lump sum.

(C) LIMITATION.—A spousal agreement or court order may not provide for payment to a qualified former spouse under this subsection of an amount that exceeds the employee's account balance in the Thrift Savings Fund.

(D) DEATH OF QUALIFIED FORMER SPOUSE.—If the qualified former spouse dies before payment of the benefit provided under this subsection, such payment shall be made to the estate of the qualified former spouse.

(E) BAR TO RECOVERY.—Any payment under this subsection to an individual bars recovery by any other individual.

(3) CLOSED ACCOUNT.—No payment under this subsection may be made by the Director if the date on which the divorce becomes final is after the date on which the total amount of the employee's account balance has been withdrawn or transferred, or the date on which an annuity contract has been purchased, in accordance with section 8433 of title 5, United States Code.

(f) PRESERVATION OF RIGHTS OF QUALIFIED FORMER SPOUSES.—An employee may not make an election or modification of election under section 8417 or 8418 of title 5, United States Code, or other section relating to the employee's annuity under subchapter II of chapter 84 of title 5, United States Code, that would diminish the

entitlement of a qualified former spouse to any benefit granted to such former spouse by this section or by court order or spousal agreement.

(g) **PAYMENT OF SHARE OF LUMP-SUM CREDIT.**—Whenever an employee or former employee becomes entitled to receive the lump-sum credit under section 8424(a) of title 5, United States Code, a share (determined under subsection (c)(1)(B) of this section) of that lump-sum credit shall be paid to any qualified former spouse of such employee, unless otherwise expressly provided by any spousal agreement or court order governing disposition of the lump-sum credit involved.

(h) **PAYMENT TO QUALIFIED FORMER SPOUSES UNDER COURT ORDER OR SPOUSAL AGREEMENT.**—In the case of any employee or retired employee who has a qualified former spouse who is covered by a court order or who is a party to a spousal agreement—

(1) any right of the qualified former spouse to any retirement benefits under subsection (c) and to any survivor benefits under subsection (d), and the amount of any such benefits;

(2) any right of the qualified former spouse to any Thrift Savings Plan benefit under subsection (e), and the amount of any such benefit; and

(3) any right of the qualified former spouse to any payment of a lump-sum credit under subsection (g), and the amount of any such payment;

shall be determined in accordance with that spousal agreement or court order, if and to the extent expressly provided for in the terms of the spousal agreement or court order that are not inconsistent with the requirements of this section.

(i) **APPLICABILITY OF CIARDS FORMER SPOUSE BENEFITS.**—

(1) Except as provided in paragraph (2), in the case of an employee who has elected to become subject to chapter 84 of title 5, United States Code, the provisions of sections 224 and 225 shall apply to such employee's former spouse (as defined in section 102(a)(4)) who would otherwise be eligible for benefits under sections 224 and 225 but for the employee having elected to become subject to such chapter.

(2) For the purposes of computing such former spouse's benefits under sections 224 and 225—

(A) the retirement benefits shall be equal to the amount determined under subsection (c)(7)(A); and

(B) the survivor benefits shall be equal to 55 percent of the full amount of the employee's annuity computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or regulations prescribed under section 307 of this Act.

(3) Benefits provided pursuant to this subsection shall be payable from the Central Intelligence Agency Retirement and Disability Fund.

**SEC. 305. [50 U.S.C. 2155] ADMINISTRATIVE PROVISIONS.**

(a) **FINALITY OF DECISIONS OF DIRECTOR.**—Section 201(c) of this Act shall apply in the administration of chapter 84 of title 5, United States Code, with respect to employees of the Agency.

(b) **EXCEPTION.**—Notwithstanding subsection (a), section 8461(e) of title 5, United States Code, shall apply with respect to

employees of the Agency who are not participants in the Central Intelligence Agency Retirement and Disability System and are not designated under section 302(a).

**SEC. 306. [50 U.S.C. 2156] REGULATIONS.**

(a) **REQUIREMENT.**—The Director shall prescribe in regulations appropriate procedures to carry out this title. Such regulations shall be prescribed in consultation with the Director of the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board.

(b) **CONGRESSIONAL REVIEW.**—The Director shall submit regulations prescribed under subsection (a) to the congressional intelligence committees before they take effect.

**SEC. 307. [50 U.S.C. 2157] TRANSITION REGULATIONS.**

(a) **REGULATIONS.**—The Director shall prescribe regulations providing for the transition from the Central Intelligence Agency Retirement and Disability System to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, in a manner consistent with sections 301 through 304 of the Federal Employees' Retirement System Act of 1986.

(b) **CONGRESSIONAL REVIEW.**—The Director shall submit regulations prescribed under subsection (a) to the congressional intelligence committees before they take effect.

**Laws Modifying the Central Intelligence Agency Retirement  
and Disability System**

**(Through May 25, 1990)**

SECTION 214 OF PUBLIC LAW 94-522

(Act of October 17, 1976, 90 Stat. 2472, 50 U.S.C. 403 note)

SEC. 214. (a) An annuity payable from the Central Intelligence Agency Retirement and Disability Fund to an annuitant which is based on a separation occurring prior to October 20, 1969, is increased by \$240 per annum.

(b) In lieu of any increase based on an increase under subsection (a) of this section, an annuity payable from the Central Intelligence Agency Retirement and Disability Fund to the surviving spouse of an annuitant, which is based on a separation occurring prior to October 20, 1969, shall be increased by \$132 per annum.

(c) The monthly rate of an annuity resulting from an increase under this section shall be considered as the monthly rate of annuity payable under section 221(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended (78 Stat. 1043; 50 U.S.C. 403 note) for purposes of computing the minimum annuity under new section 221(l) of the Act, as added by section 204 of this Act.



## **CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION PAY ACT**

(Public Law 103-36; 107 Stat. 104; approved June 8, 1993)

AN ACT To authorize the establishment of a program under which employees of the Central Intelligence Agency may be offered separation pay to separate from service voluntarily to avoid or minimize the need for involuntary separations due to downsizing, reorganization, transfer of function, or other similar action, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. [50 U.S.C. 2001 nt] SHORT TITLE.**

This Act may be cited as the “Central Intelligence Agency Voluntary Separation Pay Act”.

### **SEC. 2. [50 U.S.C. 403-4 nt] SEPARATION PAY.**

(a) DEFINITIONS.—For purposes of this section—

(1) the term “Director” means the Director of Central Intelligence; and

(2) the term “employee” means an employee of the Central Intelligence Agency, serving under an appointment without time limitation, who has been currently employed for a continuous period of at least 12 months, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system for employees of the Government; or

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A).

(b) ESTABLISHMENT OF PROGRAM.—In order to avoid or minimize the need for involuntary separations due to downsizing, reorganization, transfer of function, or other similar action, the Director may establish a program under which employees may be offered separation pay to separate from service voluntarily (whether by retirement or resignation). An employee who receives separation pay under such program may not be reemployed by the Central Intelligence Agency for the 12-month period beginning on the effective date of the employee’s separation. An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 and accepts employment with the Government of the United States within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the

Central Intelligence Agency. If the employment is with an Executive agency (as defined by section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(c) BAR ON CERTAIN EMPLOYMENT.—

(1) BAR.—An employee may not be separated from service under this section unless the employee agrees that the employee will not—

(A) act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to the Central Intelligence Agency; or

(B) participate in any manner in the award, modification, extension, or performance of any contract for property or services with the Central Intelligence Agency, during the 12-month period beginning on the effective date of the employee's separation from service.

(2) PENALTY.—An employee who violates an agreement under this subsection shall be liable to the United States in the amount of the separation pay paid to the employee pursuant to this section times the proportion of the 12-month period during which the employee was in violation of the agreement.

(d) LIMITATIONS.—Under this program, separation pay may be offered only—

(1) with the prior approval of the Director; and

(2) to employees within such occupational groups or geographic locations, or subject to such other similar limitations or conditions, as the Director may require.

(e) AMOUNT AND TREATMENT FOR OTHER PURPOSES.—Such separation pay—

(1) shall be paid in a lump sum;

(2) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code, if the employee were entitled to payment under such section; or

(B) \$25,000;

(3) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(4) shall not be taken into account for the purpose of determining the amount of any severance pay to which an indi-

vidual may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(f) TERMINATION.—No amount shall be payable under this section based on any separation occurring after September 30, 2005.

(g) REGULATIONS.—The Director shall prescribe such regulations as may be necessary to carry out this section.

(h) REPORTING REQUIREMENTS.—

(1) OFFERING NOTIFICATION.—The Director may not make an offering of voluntary separation pay pursuant to this section until 30 days after submitting to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report describing the occupational groups or geographic locations, or other similar limitations or conditions, required by the Director under subsection (d).

(2) ANNUAL REPORT.—At the end of each of the fiscal years 1993 through 1997, the Director shall submit to the President and the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the effectiveness and costs of carrying out this section.

(i) REMITTANCE OF FUNDS.—The Director shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund (in addition to any other payments which the Director is required to make under subchapter III of chapter 83 and subchapter II of chapter 84 of title 5, United States Code), an amount equal to 15 percent of the final basic pay of each employee who, in fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, or 2005, retires voluntarily under section 8336, 8412, or 8414 of such title or resigns and to whom a voluntary separation incentive payment has been or is to be paid under this section. The remittance required by this subsection shall be in lieu of any remittance required by section 4(a) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 8331 note).

**SEC. 3. EARLY RETIREMENT FOR CIARDS AND FERS SPECIAL PARTICIPANTS.**

【Section 3 amended section 233 of the Central Intelligence Agency Retirement Act by designating existing text as subsection (a) and adding at the end a new subsection (b).】



## **B. NATIONAL SECURITY AGENCY**

### **NATIONAL SECURITY AGENCY ACT OF 1959**

(Public Law 86-36; 73 Stat. 63; approved May 29, 1959; 50 U.S.C. 402 note)

AN ACT To provide certain administrative authorities for the National Security Agency, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the “National Security Agency Act of 1959”.

SEC. 2. [Section 2 was repealed by section 1633(b)(1) of P.L. 104-201 (September 23, 1996, 110 Stat. 2751).]

SEC. 3. [Section 3 consisted of amendments to section 1581(a) of title 10, United States Code.]

SEC. 4. [Section 4 was repealed by section 1633(b)(1) of P.L. 104-201 (September 23, 1996, 110 Stat. 2751).]

SEC. 5. Officers and employees of the National Security Agency who are citizens or nationals of the United States may be granted additional compensation, in accordance with regulations which shall be prescribed by the Secretary of Defense, not in excess of additional compensation authorized by section 207 of the Independent Offices Appropriation Act, 1949, as amended (5 U.S.C. 118h),<sup>1</sup> for employees whose rates of basic compensation are fixed by statute.

SEC. 6. (a) Except as provided in subsection (b) of this section, nothing in this Act or any other law (including, but not limited to, the first section and section 2 of the Act of August 28, 1935 (5 U.S.C. 654)<sup>2</sup>) shall be construed to require the disclosure of the organization or any function of the National Security Agency, of any information with respect to the activities thereof, or of the names, titles, salaries, or number of the persons employed by such agency.

(b) The reporting requirements of section 1582 of title 10, United States Code, shall apply to positions established in the National Security Agency in the manner provided by section 4 of this Act.

SEC. 7. [Section 7 was repealed by section 8(a) of Public Law 89-554 (September 6, 1966, 80 Stat. 660).]

SEC. 8. The foregoing provisions of this Act shall take effect on the first day of the first pay period which begins later than the thirtieth day following the date of enactment of this Act.

SEC. 9. (a) Notwithstanding section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), section 5536 of title 5, United States Code, and section 2675 of title 10, United States Code, the Director of the

<sup>1</sup>The Independent Offices Appropriation Act, 1949, was repealed by the law enacting title 5, United States Code (Public Law 89-554, Sept 6, 1966, 80 Stat. 378). Section 207 of that Act was codified as section 5941 of title 5, United States Code.

<sup>2</sup>Repealed by section 101 of Public Law 86-626 (July 12, 1960, 74 Stat. 427).

National Security Agency, on behalf of the Secretary of Defense, may lease real property outside the United States, for periods not exceeding ten years, for the use of the National Security Agency for special cryptologic activities and for housing for personnel assigned to such activities.

(b) The Director of the National Security Agency, on behalf of the Secretary of Defense, may provide to certain civilian and military personnel of the Department of Defense who are assigned to special cryptologic activities outside the United States and who are designated by the Secretary of Defense for the purposes of this subsection—

(1) allowances and benefits—

(A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4081 et seq.) or any other provision of law; and

(B) in the case of selected personnel serving in circumstances similar to those in which personnel of the Central Intelligence Agency serve, comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency;

(2) housing (including heat, light, and household equipment) without cost to such personnel, if the Director of the National Security Agency, on behalf of the Secretary of Defense determines that it would be in the public interest to provide such housing; and

(3) special retirement accrual in the same manner provided in section 303 of the Central Intelligence Agency Retirement Act (50 U.S.C. 403 note) and in section 18 of the Central Intelligence Agency Act of 1949.

(c) The authority of the Director of the National Security Agency, on behalf of the Secretary of Defense, to make payments under subsections (a) and (b), and under contracts for leases entered into under subsection (a), is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(d) Members of the Armed Forces may not receive benefits under both subsection (b)(1) and title 37, United States Code, for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.

(e) Regulations issued pursuant to subsection (b)(1) shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate before such regulations take effect.

SEC. 10. (a) The Director of the National Security Agency shall arrange for, and shall prescribe regulations concerning, language and language-related training programs for military and civilian cryptologic personnel. In establishing programs under this section for language and language-related training, the Director—

(1) may provide for the training and instruction to be furnished, including functional and geographic area specializations;

(2) may arrange for training and instruction through other Government agencies and, in any case in which appropriate training or instruction is unavailable through Government facilities, through nongovernmental facilities that furnish train-

ing and instruction useful in the fields of language and foreign affairs;

(3) may support programs that furnish necessary language and language-related skills, including, in any case in which appropriate programs are unavailable at Government facilities, support through contracts, grants, or cooperation with non-governmental educational institutions; and

(4) may obtain by appointment or contract the services of individuals to serve as language instructors, linguists, or special language project personnel.

(b)(1) In order to maintain necessary capability in foreign language skills and related abilities needed by the National Security Agency, the Director, without regard to subchapter IV of chapter 55 of title 5, United States Code, may provide special monetary or other incentives to encourage civilian cryptologic personnel of the Agency to acquire or retain proficiency in foreign languages or special related abilities needed by the Agency.

(2) In order to provide linguistic training and support for cryptologic personnel, the Director—

(A) may pay all or part of the tuition and other expenses related to the training of personnel who are assigned or detailed for language and language-related training, orientation, or instruction; and

(B) may pay benefits and allowances to civilian personnel in accordance with chapters 57 and 59 of title 5, United States Code, and to military personnel in accordance with chapter 7 of title 37, United States Code, and applicable provisions of title 10, United States Code, when such personnel are assigned to training at sites away from their designated duty station.

(c)(1) To the extent not inconsistent, in the opinion of the Secretary of Defense, with the operation of military cryptologic reserve units and in order to maintain necessary capability in foreign language skills and related abilities needed by the National Security Agency, the Director may establish a cryptologic linguist reserve. The cryptologic linguist reserve may consist of former or retired civilian or military cryptologic personnel of the National Security Agency and of other qualified individuals, as determined by the Director of the Agency. Each member of the cryptologic linguist reserve shall agree that, during any period of emergency (as determined by the Director), the member shall return to active civilian status with the National Security Agency and shall perform such linguistic or linguistic-related duties as the Director may assign.

(2) In order to attract individuals to become members of the cryptologic linguist reserve, the Director, without regard to subchapter IV of chapter 55 of title 5, United States Code, may provide special monetary incentives to individuals eligible to become members of the reserve who agree to become members of the cryptologic linguist reserve and to acquire or retain proficiency in foreign languages or special related abilities.

(3) In order to provide training and support for members of the cryptologic linguist reserve, the Director—

(A) may pay all or part of the tuition and other expenses related to the training of individuals in the cryptologic linguist reserve who are assigned or detailed for language and language-related training, orientation, or instruction; and

(B) may pay benefits and allowances in accordance with chapters 57 and 59 of title 5, United States Code, to individuals in the cryptologic linguist reserve who are assigned to training at sites away from their homes or regular places of business.

(d)(1) The Director, before providing training under this section to any individual, may obtain an agreement with that individual that—

(A) in the case of current employees, pertains to continuation of service of the employee, and repayment of the expenses of such training for failure to fulfill the agreement, consistent with the provisions of section 4108 of title 5, United States Code; and

(B) in the case of individuals accepted for membership in the cryptologic linguist reserve, pertains to return to service when requested, and repayment of the expenses of such training for failure to fulfill the agreement, consistent with the provisions of section 4108 of title 5, United States Code.

(2) The Director, under regulations prescribed under this section, may waive, in whole or in part, a right of recovery under an agreement made under this subsection if it is shown that the recovery would be against equity and good conscience or against the public interest.

(e)(1) Subject to paragraph (2), the Director may provide to family members of military and civilian cryptologic personnel assigned to representational duties outside the United States, in anticipation of the assignment of such personnel outside the United States or while outside the United States, appropriate orientation and language training that is directly related to the assignment abroad.

(2) Language training under paragraph (1) may not be provided to any individual through payment of the expenses of tuition or other cost of instruction at a non-Government educational institution unless appropriate instruction is not available at a Government facility.

(f) The Director may waive the applicability of any provision of chapter 41 of title 5, United States Code, to any provision of this section if he finds that such waiver is important to the performance of cryptologic functions.

(g) The authority of the Director to enter into contracts or to make grants under this section is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(h) Regulations issued pursuant to this section shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate before such regulations take effect.

(i) The Director of the National Security Agency, on behalf of the Secretary of Defense, may, without regard to section 4109(a)(2)(B) of title 5, United States Code, pay travel, transportation, storage, and subsistence expenses under chapter 57 of such title to civilian and military personnel of the Department of Defense who are assigned to duty outside the United States for a period of one year or longer which involves cryptologic training, language training, or related disciplines.

SEC. 11. (a)(1) The Director of the National Security Agency may authorize agency personnel within the United States to perform the same functions as special policemen of the General Services Administration perform under the first section of the Act entitled "An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes" (40 U.S.C. 318) with the powers set forth in that section, except that such personnel shall perform such functions and exercise such powers—

(A) at the National Security Agency Headquarters complex and at any facilities and protected property which are solely under the administration and control of, or are used exclusively by, the National Security Agency; and

(B) in the streets, sidewalks, and the open areas within the zone beginning at the outside boundary of such facilities or protected property and extending outward 500 feet.

(2) The performance of functions and exercise of powers under subparagraph (B) of paragraph (1) shall be limited to those circumstances where such personnel can identify specific and articulable facts giving such personnel reason to believe that the performance of such functions and exercise of such powers is reasonable to protect against physical damage or injury, or threats of physical damage or injury, to agency installations, property, or employees.

(3) Nothing in this subsection shall be construed to preclude, or limit in any way, the authority of any Federal, State, or local law enforcement agency, or any other Federal police or Federal protective service.

(4) The rules and regulations enforced by such personnel shall be the rules and regulations prescribed by the Director and shall only be applicable to the areas referred to in subparagraph (A) of paragraph (1).

(5) Not later than July 1 each year through 2004, the Director shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report that describes in detail the exercise of the authority granted by this subsection and the underlying facts supporting the exercise of such authority, during the preceding fiscal year. The Director shall make each such report available to the Inspector General of the National Security Agency.

(b) The Director of the National Security Agency is authorized to establish penalties for violations of the rules or regulations prescribed by the Director under subsection (a). Such penalties shall not exceed those specified in the fourth section of the Act referred to in subsection (a) (40 U.S.C. 318c).

(c) Agency personnel designated by the Director of the National Security Agency under subsection (a) shall be clearly identifiable as United States Government security personnel while engaged in the performance of the functions to which subsection (a) refers.

SEC. 12. (a)(1) The Secretary of Defense (or his designee) may by regulation establish a personnel system for senior civilian cryptologic personnel in the National Security Agency to be known

as the Senior Cryptologic Executive Service. The regulations establishing the Senior Cryptologic Executive Service shall—

(A) meet the requirements set forth in section 3131 of title 5, United States Code, for the Senior Executive Service;

(B) provide that positions in the Senior Cryptologic Executive Service meet requirements that are consistent with the provisions of section 3132(a)(2) of such title;

(C) provide, without regard to section 2, rates of pay for the Senior Cryptologic Executive Service that are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 of such title, and that are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

(D) provide a performance appraisal system for the Senior Cryptologic Executive Service that conforms to the provisions of subchapter II of chapter 43 of such title;

(E) provide for removal consistent with section 3592 of such title, and removal or suspension consistent with subsections (a), (b), and (c) of section 7543 of such title (except that any hearing or appeal to which a member of the Senior Cryptologic Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Secretary of Defense or his designee);

(F) permit the payment of performance awards to members of the Senior Cryptologic Executive Service consistent with the provisions applicable to performance awards under section 5384 of such title;

(G) provide that members of the Senior Cryptologic Executive Service may be granted sabbatical leaves consistent with the provisions of section 3396(c) of such title.<sup>1</sup>

(H) provide for the recertification of members of the Senior Cryptologic Executive Service consistent with the provisions of section 3393a of such title.

(2) Except as otherwise provided in subsection (a), the Secretary of Defense (or his designee) may—

(A) make applicable to the Senior Cryptologic Executive Service any of the provisions of title 5, United States Code, applicable to applicants for or members of the Senior Executive Service; and

(B) appoint, promote, and assign individuals to positions established within the Senior Cryptologic Executive Service without regard to the provisions of title 5, United States Code, governing appointments and other personnel actions in the competitive service.

(3) The President, based on the recommendations of the Secretary of Defense, may award ranks to members of the Senior Cryptologic Executive Service in a manner consistent with the provisions of section 4507 of title 5, United States Code.

(4) Notwithstanding any other provision of this section, the Director of the National Security Agency may detail or assign any

<sup>1</sup>Public Law 101-194, sec. 506(c)(2) (103 Stat. 1759) amended sec. 12(a)(1)(G) by inserting "and" after the semicolon at the end of (G). Because there was not a semicolon at the end of (G), the amendment was not executed. This amendment would have taken effect on January 1, 1991.

member of the Senior Cryptologic Executive Service to serve in a position outside the National Security Agency in which the member's expertise and experience may be of benefit to the National Security Agency or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the Senior Cryptologic Executive Service.

(b) The Secretary of Defense (or his designee) may by regulation establish a merit pay system for such employees of the National Security Agency as the Secretary of Defense (or his designee) considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401(a) of title 5, United States Code.

(c) Nothing in this section shall be construed to allow the aggregate amount payable to a member of the Senior Cryptologic Executive Service under this section during any fiscal year to exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such year.

SEC. 13. (a) The Director of the National Security Agency may make grants to private individuals and institutions for the conduct of cryptologic research. An application for a grant under this section may not be approved unless the Director determines that the award of the grant would be clearly consistent with the national security.

(b) The grant program established by subsection (a) shall be conducted in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) to the extent that such Act is consistent with and in accordance with section 6 of this Act.

(c) The authority of the Director to make grants under this section is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

SEC. 14. Funds appropriated to an entity of the Federal Government other than an element of the Department of Defense that have been specifically appropriated for the purchase of cryptologic equipment, materials, or services with respect to which the National Security Agency has been designated as the central source of procurement for the Government shall remain available for a period of three fiscal years.

SEC. 15. (a) No person may, except with the written permission of the Director of the National Security Agency, knowingly use the words "National Security Agency", the initials "NSA", the seal of the National Security Agency, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the National Security Agency.

(b) Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other ac-

tion as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

SEC. 16. (a) The purpose of this section is to establish an undergraduate training program, which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to the mission of the National Security Agency, including mathematics, computer science, engineering, and foreign languages.

(b) The Secretary of Defense is authorized, in his discretion, to assign civilian employees of the National Security Agency as students at accredited professional, technical, and other institutions of higher learning for training at the undergraduate level in skills critical to effective performance of the mission of the Agency.

(c) The National Security Agency may pay, directly or by reimbursement to employees, expenses incident to assignments under subsection (b), in any fiscal year only to the extent that appropriated funds are available for such purpose.

(d)(1) To be eligible for assignment under subsection (b), an employee of the Agency must agree in writing—

(A) to continue in the service of the Agency for the period of the assignment and to complete the educational course of training for which the employee is assigned;

(B) to continue in the service of the Agency following completion of the assignment for a period of one-and-a-half years for each year of the assignment or part thereof;

(C) to reimburse the United States for the total cost of education (excluding the employee's pay and allowances) provided under this section to the employee if, prior to the employee's completing the educational course of training for which the employee is assigned, the assignment or the employee's employment with the Agency is terminated either by the Agency due to misconduct by the employee or by the employee voluntarily; and

(D) to reimburse the United States if, after completing the educational course of training for which the employee is assigned, the employee's employment with the Agency is terminated either by the Agency due to misconduct by the employee or by the employee voluntarily, prior to the employee's completion of the service obligation period described in subparagraph (B), in an amount that bears the same ratio to the total cost of the education (excluding the employee's pay and allowances) provided to the employee as the unserved portion of the service obligation period described in subparagraph (B) bears to the total period of the service obligation described in subparagraph (B).

(2) Subject to paragraph (3), the obligation to reimburse the United States under an agreement described in paragraph (1), including interest due on such obligation, is for all purposes a debt owing the United States.

(3)(A) A discharge in bankruptcy under title 11, United States Code, shall not release a person from an obligation to reimburse the United States required under an agreement described in paragraph (1) if the final decree of the discharge in bankruptcy is

issued within five years after the last day of the combined period of service obligation described in subparagraphs (A) and (B) of paragraph (1).

(B) The Secretary of Defense may release a person, in whole or in part, from the obligation to reimburse the United States under an agreement described in paragraph (1) when, in his discretion, the Secretary determines that equity or the interests of the United States so require.

(C) The Secretary of Defense shall permit an employee assigned under this section who, prior to commencing a second academic year of such assignment, voluntarily terminates the assignment or the employee's employment with the Agency, to satisfy his obligation under an agreement described in paragraph (1) to reimburse the United States by reimbursement according to a schedule of monthly payments which results in completion of reimbursement by a date five years after the date of termination of the assignment or employment or earlier at the option of the employee.

(e)(1) When an employee is assigned under this section to an institution, the Agency shall disclose to the institution to which the employee is assigned that the Agency employs the employee and that the Agency funds the employee's education.

(2) Agency efforts to recruit individuals at educational institutions for participation in the undergraduate training program established by this section shall be made openly and according to the common practices of universities and employers recruiting at such institutions.

(f) Chapter 41 of title 5 and subsections (a) and (b) of section 3324 of title 31, United States Code, shall not apply with respect to this section.

(g) The Secretary of Defense may issue such regulations as may be necessary to implement this section.

SEC. 17. [Section 17 was repealed by section 806(b)(2) of P.L. 103-359 (October 14, 1994, 108 Stat. 3442).]

SEC. 18. (a) The Secretary of Defense may pay the expenses referred to in section 5742(b) of title 5, United States Code, in the case of any employee of the National Security Agency who dies while on a rotational tour of duty within the United States or while in transit to or from such tour of duty.

(b) For the purposes of this section, the term "rotational tour of duty", with respect to an employee, means a permanent change of station involving the transfer of the employee from the National Security Agency headquarters to another post of duty for a fixed period established by regulation to be followed at the end of such period by a permanent change of station involving a transfer of the employee back to such headquarters.



## TITLE III OF THE INTERNAL SECURITY ACT OF 1950

(Added by Public Law 88-290; 78 Stat. 168; March 26, 1964)

### TITLE III—PERSONNEL SECURITY PROCEDURES IN NATIONAL SECURITY AGENCY

#### REGULATIONS FOR EMPLOYMENT SECURITY

SEC. 301. [50 U.S.C. 831] Subject to the provisions of this title, the Secretary of Defense (hereinafter in this title referred to as the "Secretary") shall prescribe such regulations relating to continuing security procedures as he considers necessary to assure—

(1) that no person shall be employed in, or detailed or assigned to, the National Security Agency (hereafter in this title referred to as the "Agency"), or continue to be so employed, detailed, or assigned; and

(2) that no person so employed, detailed, or assigned shall have access to any classified information; unless such employment, detail, assignment, or access to classified information is clearly consistent with the national security.

#### FULL FIELD INVESTIGATION AND APPRAISAL

SEC. 302. [50 U.S.C. 832] (a) No person shall be employed in, or detailed or assigned to, the Agency unless he has been the subject of a full field investigation in connection with such employment, detail, or assignment, and is cleared for access to classified information in accordance with the provisions of this title; excepting that conditional employment without access to sensitive cryptologic information or material may be tendered any applicant under such regulations as the Secretary may prescribe, pending the completion of such full field investigation: *And provided further*, That such full field investigation at the discretion of the Secretary need not be required in the case of persons assigned or detailed to the Agency who have a current security clearance for access to sensitive cryptologic information under equivalent standards of investigation and clearance. During any period of war declared by the Congress, or during any period when the Secretary determines that a national disaster exists, or in exceptional cases in which the Secretary (or his designee for such purpose) makes a determination in writing that his action is necessary or advisable in the national interest, he may authorize the employment of any person in, or the detail or assignment of any person to, the Agency, and may grant to any such person access to classified information, on a temporary basis, pending the completion of the full field investigation and the clearance for access to classified information required by this subsection, if the Secretary determines that such action is clearly consistent with the national security.

(b) To assist the Secretary and the Director of the Agency in carrying out their personnel security responsibilities, one or more boards of appraisal of three members each, to be appointed by the Director of the Agency, shall be established in the Agency. Such a board shall appraise the loyalty and suitability of persons for access to classified information, in those cases in which the Director of the Agency determines that there is a doubt whether their access to that information would be clearly consistent with the national security, and shall submit a report and recommendation on each such a case. However, appraisal by such a board is not required before action may be taken under section 14 of the Act of June 27, 1944, chapter 287, as amended (5 U.S.C. 863), section 1 of the Act of August 26, 1950, chapter 803, as amended (5 U.S.C. 22-1), or any other similar provision of law. Each member of such a board shall be specially qualified and trained for his duties as such a member, shall have been the subject of a full field investigation in connection with his appointment as such a member, and shall have been cleared by the Director for access to classified information at the time of his appointment as such a member. No person shall be cleared for access to classified information, contrary to the recommendations of any such board, unless the Secretary (or his designee for such purpose) shall make a determination in writing that such employment, detail, assignment, or access to classified information is in the national interest.

[SEC. 303. Repealed by section 1633(b)(2) of P.L. 104-201.]

#### DEFINITION OF CLASSIFIED INFORMATION

SEC. 304. [50 U.S.C. 834] For the purposes of this section, the term "classified information" means information which, for reasons of national security, is specifically designated by a United States Government agency for limited or restricted dissemination or distribution.

#### NONAPPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

SEC. 305. [50 U.S.C. 835] The Administrative Procedure Act, as amended (5 U.S.C. 1001 et seq.)<sup>1</sup>, shall not apply to the use or exercise of any authority granted by this title.

#### AMENDMENTS

SEC. 306. [Section 306 consisted of amendments to other laws.]

<sup>1</sup>So in original. The Administrative Procedure Act was repealed by P.L. 89-554 as part of a general revision of title 5, United States Code. These provisions were codified as subchapter II of chapter 5 and chapter 7 of title 5, United States Code.

## C. OTHER INTELLIGENCE STATUTES

### FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978<sup>1</sup>

(Public Law 95-511; 92 Stat. 1783; approved October 25, 1978)

AN ACT To authorize electronic surveillance to obtain foreign intelligence information.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [50 U.S.C. 1801 nt] this Act may be cited as the “Foreign Intelligence Surveillance Act of 1978”.*

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<sup>1</sup>In connection with this Act, see also section 107 of the Electronic Communications Privacy Act of 1986 regarding certain intelligence activities involving communications security, foreign power radio communications, and foreign power electronic communications systems; and see also section 2232 of title 18, United States Code, regarding prohibition on warning an individual of Foreign Intelligence Surveillance Act of 1978 surveillance. See also Communications Assistance for Law Enforcement Act, *infra* at p. 901.

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TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE  
UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

DEFINITIONS

SEC. 101. [50 U.S.C. 1801] As used in this title:

- (a) "Foreign power" means—
- (1) a foreign government or any component, thereof, whether or not recognized by the United States;
  - (2) a faction of a foreign nation or nations, not substantially composed of United States persons;
  - (3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;
  - (4) a group engaged in international terrorism or activities in preparation therefor;
  - (5) a foreign-based political organization, not substantially composed of United States persons; or
  - (6) an entity that is directed and controlled by a foreign government or governments.
- (b) "Agent of a foreign power" means—
- (1) any person other than a United States person, who—
    - (A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4);
    - (B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or
  - (2) any person who—
    - (A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;
    - (B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

- (C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;
- (D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or
- (E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).
- (c) "International terrorism" means activities that—
- (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;
  - (2) appear to be intended—
    - (A) to intimidate or coerce a civilian population;
    - (B) to influence the policy of a government by intimidation or coercion; or
    - (C) to affect the conduct of a government by assassination or kidnapping; and
  - (3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.
- (d) "Sabotage" means activities that involve a violation of chapter 105 of title 18, United States Code, or that would involve such a violation if committed against the United States.
- (e) "Foreign intelligence information" means—
- (1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—
    - (A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
    - (B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or
    - (C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or
  - (2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—
    - (A) the national defense or the security of the United States; or
    - (B) the conduct of the foreign affairs of the United States.
- (f) "Electronic surveillance" means—
- (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communications sent by or intended to be received by a particular, known United States person who is in the United States, if the

contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18, United States Code;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Attorney General" means the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General.

(h) "Minimization procedures", with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (c)(1), shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 102(a), procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than 72 hours unless a court order under sec-

tion 105 is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a) (1), (2), or (3).

(j) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) "Wire communication" means any communications while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communications or the existence, substance, purport, or meaning of that communication.

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, an any territory or possession of the United States.

AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN  
INTELLIGENCE PURPOSES

SEC. 102. [50 U.S.C. 1802] (a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among foreign powers, as defined in section 101(a) (1), (2), or (3); or

(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in section 101(a) (1), (2), or (3);

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communications to which a United States person is a party; and

(C) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h); and  
if the Attorney General reports such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him. The Attorney General shall assess compliance with such procedures and shall report such assessments to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence under the provisions of section 108(a).

(3) The Attorney General shall immediately transmit under seal to the court established under section 103(a) a copy of his certification. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of Central Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the surveillance is made under sections 101(h)(4) and 104; or

(B) the certification is necessary to determine the legality of the surveillance under section 106(f).

(4) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under section 103, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 105, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) unless such surveillance may involve the acquisition of communications of any United States person.

## DESIGNATION OF JUDGES

SEC. 103. [50 U.S.C. 1803] (a) The Chief Justice of the United States shall publicly designate 11 district court judges from seven of the United States judicial circuits of whom no fewer than 3 shall reside within 20 miles of the District of Columbia who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this Act, except that no judge designated under this subsection shall hear the same application for electronic surveillance under this Act which has been denied previously by another judge designated under this subsection. If any judge so designated denies an application for an order authorizing electronic surveillance under this Act, such judge shall provide immediately for the record a written statement of each reason for his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b).

(b) The Chief Justice shall publicly designate three judges, one of whom shall be publicly designate as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this Act. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(c) Proceedings under this Act shall be conducted as expeditiously as possible. The record of proceedings under this Act, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of Central Intelligence.

(d) Each judge designated under this section shall so serve for a maximum of seven years and shall not be eligible for redesignation, except that the judges first designated under subsection (a) shall be designated for terms of from one to seven years so that one term expires each year, and that judges first designated under subsection (b) shall be designated for terms of three, five, and seven years.

## APPLICATION FOR AN ORDER

SEC. 104. [50 U.S.C. 1804] (a) Each application for an order approving electronic surveillance under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 103. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title. It shall include—

(1) the identity of the Federal officer making the application;

(2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity, if known, or a description of the target of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that a significant purpose<sup>1</sup> of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(8) a statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance;

(9) a statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application;

(10) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the na-

<sup>1</sup> Section 218 of Public Law 107-56 amended section 104(a)(7)(B) by striking "the purpose" and inserting "a significant purpose". Section 224 of such public law provides as follows:

**SEC. 224. SUNSET.**

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title (other than sections 203(a), 203(c), 205, 208, 210, 211, 213, 216, 219, 221, and 222, and the amendments made by those sections) shall cease to have effect on December 31, 2005.

(b) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in subsection (a) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.

ture of the intelligence gathering is such that the approval of the use of electronic surveillance under this title should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and

(11) whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

(b) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the application need not contain the information required by paragraphs (6), (7)(E), (8), and (11) of subsection (a), but shall state whether physical entry is required to effect the surveillance and shall contain such information about the surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

(c) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(d) The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 105.

(e)(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, or the Director of Central Intelligence, the Attorney General shall personally review under subsection (a) an application under that subsection for a target described in section 101(b)(2).

(B) Except when disabled or otherwise unavailable to make a request referred to in subparagraph (A), an official referred to in that subparagraph may not delegate the authority to make a request referred to in that subparagraph.

(C) Each official referred to in subparagraph (A) with authority to make a request under that subparagraph shall take appropriate actions in advance to ensure that delegation of such authority is clearly established in the event such official is disabled or otherwise unavailable to make such request.

(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. Except when disabled or otherwise unavailable to make a determination under the preceding sentence, the Attorney General may not delegate the responsibility to make a determination under that sentence. The Attorney General shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event the Attorney General is disabled or otherwise unavailable to make such determination.

(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) for purposes of making the application under this section.

(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Except when disabled or otherwise unavailable to supervise the making of any modification under the preceding sentence, such official may not delegate the responsibility to supervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

#### ISSUANCE OF AN ORDER

SEC. 105. [50 U.S.C. 1805] (a) Upon an application made pursuant to section 104, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *Provided*, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) the proposed minimization procedures meet the definition of minimization procedures under section 101(h); and

(5) the application which has been filed contains all statements and certifications required by section 104 and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 104(a)(7)(E) and any other information furnished under section 104(d).

(b) In determining whether or not probable cause exists for purposes of an order under subsection (a)(3), a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

(c) An order approving an electronic surveillance under this section shall—

(1) specify—

- (A) the identity, if known, or a description of the target of the electronic surveillance;
  - (B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known;
  - (C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;
  - (D) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance;
  - (E) the period of time during which the electronic surveillance is approved; and
  - (F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; and
- (2) direct—
- (A) that the minimization procedures be followed;
  - (B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person, or in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons,<sup>1</sup> furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;
  - (C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and
  - (D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.
- (d) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order used need not contain the information required by subparagraphs (C), (D), and (F) of subsection (c)(1), but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

<sup>1</sup>Section 206 of Public Law 107-56 amended subsection (c)(2)(B), by inserting “, or in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons,” after “specified person”. For the repeal of this amendment, see sunset provision in a footnote to section 104(a)(7)(B).

(e)(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that (A)<sup>1</sup> an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 101(a), (1), (2), or (3), for the period specified in the application or for one year, whichever is less, and (B) an order under this Act for a surveillance targeted against an agent of a foreign power, as defined in section 101(b)(1)(A) may be for the period specified in the application or for 120 days, whichever is less<sup>1</sup>.

(2) Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that (A)<sup>2</sup> an extension of an order under this Act for a surveillance targeted against a foreign power, a defined in section 101(a) (5) or (6), or against a foreign power as defined in section 101(a)(4) that is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period, and (B) an extension of an order under this Act for a surveillance targeted against an agent of a foreign power as defined in section 101(b)(1)(A) may be for a period not to exceed 1 year<sup>2</sup>.

(3) At or before the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(f) Notwithstanding any other provision of this title, when the Attorney General reasonably determines that—

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

(2) the factual basis for issuance of an order under this title to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge having jurisdiction under section 103 is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this title is made to that judge as soon as practicable, but not more than 72 hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title for the issuance of a judicial

<sup>1</sup>Section 207(a)(1) of Public Law 107-56 amended subsection (e)(1), by inserting "(A)" after "except that", and by inserting before the period the following: "; and (B) an order under this Act for a surveillance targeted against an agent of a foreign power, as defined in section 101(b)(1)(A) may be for the period specified in the application or for 120 days, whichever is less". For the repeal of these amendments, see sunset provision in a footnote to section 104(a)(7)(B).

<sup>2</sup>Section 207(b)(1) of Public Law 107-56, as amended by section 314(c)(1) of P.L. 107-108 (115 Stat. 1402-1403), amended subsection (e)(2) by inserting "(A)" after "except that", and by inserting before the period the following: "; and (B) an extension of an order under this Act for a surveillance targeted against an agent of a foreign power as defined in section 101(b)(1)(A) may be for a period not to exceed 1 year". For the repeal of these amendments, see sunset provision in a footnote to section 104(a)(7)(B).

order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 72 hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.

(g) Notwithstanding any other provision of this title, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

- (1) test the capability of electronic equipment, if—
  - (A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;
  - (B) the test is limited in extent and duration to that necessary to determine to capability of the equipment;
  - (C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test; and
  - (D) *Provided*, That the test may exceed ninety days only with the prior approval of the Attorney General;
- (2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—
  - (A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;
  - (B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and
  - (C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, United States Code, or section 705 of the Communications Act of 1934, or to protect information from unauthorized surveillance;or
- (3) train intelligence personnel in the use of electronic surveillance equipment, if—
  - (A) it is not reasonable to—

- (i) obtain the consent of the persons incidentally subjected to the surveillance;
  - (ii) train persons in the course of surveillances otherwise authorized by this title; or
  - (iii) train persons in the use of such equipment without engaging in electronic surveillance;
- (B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and
- (C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.
- (h) Certifications made by the Attorney General pursuant to section 102(a) and applications made and orders granted under this title shall be retained for a period of at least ten years from the date of the certification or application.
- (i)<sup>1</sup> No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance in accordance with a court order or request for emergency assistance under this Act for electronic surveillance or physical search<sup>1</sup>.

#### USE OF INFORMATION

SEC. 106. [50 U.S.C. 1806] (a) Information acquired from an electronic surveillance conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this title shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the ag-

<sup>1</sup> Section 225 of Public Law 107-56 amended section 105 by inserting after "subsection (g)" a new subsection (h). Subparagraphs (C) and (D) of section 314(a)(2) of the Intelligence Authorization Act for Fiscal Year 2002 (P.L. 107-108; 115 Stat. 1402) transferred the first subsection (h) (as added by section 225 of P.L. 107-56) to appear after the second subsection (h), redesignated such subsection as subsection (i), and inserted before the period at the end "for electronic surveillance or physical search". For the repeal of the amendment made by Public Law 107-56 (adding a new subsection (h)), see sunset provision in a footnote to section 104(a)(7)(B).

grieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) Whenever a court or other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this Act, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

(g) If the United States district court pursuant to subsection (f) determine that the surveillance was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, sup-

press the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Orders granting motions or requests under subsection (g), decisions under this section that electronic surveillance was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(i) In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicates a threat of death or serious bodily harm to any person.

(j) If an emergency employment of electronic surveillance is authorized under section 105(e) and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(k)(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this title may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

- (A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
- (B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or
- (C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 104(a)(7)(B) or the entry of an order under section 105.

#### REPORT OF ELECTRONIC SURVEILLANCE

SEC. 107. [50 U.S.C. 1807] In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Court and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title; and

(b) the total number of such orders and extensions either granted, modified, or denied.

#### CONGRESSIONAL OVERSIGHT

SEC. 108. [50 U.S.C. 1808] (a)(1) On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committees on Intelligence concerning all electronic surveillance under this title. Nothing in this title shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they may need to carry out their respective functions and duties.

(2) Each report under the first sentence of paragraph (1) shall include a description of—

(A) each criminal case in which information acquired under this Act has been passed for law enforcement purposes during the period covered by such report; and

(B) each criminal case in which information acquired under this Act has been authorized for use at trial during such reporting period.

(b) On or before one year after the effective date of this Act and on the same day each year for four years thereafter, the Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall report respectively to the House of Representatives and the Senate, concerning the implementation of this Act. Said reports shall include but not be limited to an analysis and recommendations concerning whether this Act should be (1) amended, (2) repealed, or (3) permitted to continue in effect without amendment.

#### PENALTIES

SEC. 109. [50 U.S.C. 1809] (a) OFFENSE.—A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by statute; or

(2) disclose or uses information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized by statute.

(b) DEFENSE.—It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic

surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) PENALTY.—An offense in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

(d) JURISDICTION.—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

#### CIVIL LIABILITY

SEC. 110. [50 U.S.C. 1810] CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101 (a) or (b)(1)(A), respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 109 shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

#### AUTHORIZATION DURING TIME OF WAR

SEC. 111. [50 U.S.C. 1811] Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress.

### TITLE II—CONFORMING AMENDMENTS

#### AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

SEC. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(2)(a)(ii) is amended to read as follows:

“(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if the common carrier, its officers, employees, or agent, landlord, custodian, or other specified person, has been provided with—

“(A) a court order directing such assistance signed by the authorizing judge, or

“(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that

all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification of the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof, shall render the carrier liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.”.

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

“(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

“(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.”.

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting “under this chapter” after “communication”.

(e) Section 2518(4) is amended by inserting “under this chapter” after both appearances of “wire or oral communication”.

(f) Section 2518(9) is amended by striking out “intercepted” and inserting “intercepted pursuant to this chapter” after “communication”.

(g) Section 2518(10) is amended by striking out “intercepted” and inserting “intercepted pursuant to this chapter” after the first appearance of “communication”.

(h) Section 2519(3) is amended by inserting “pursuant to this chapter” after “wire or oral communications” and after “granted or denied”.

## TITLE III—PHYSICAL SEARCHES WITH- IN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

### DEFINITIONS

SEC. 301. [50 U.S.C. 1821] As used in this title:

(1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “sabotage”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, and “State” shall have the same meanings as in section 101 of this Act, except as specifically provided by this title.

(2) “Aggrieved person” means a person whose premises, property, information, or material is the target of physical search or any other person whose premises, property, information, or material was subject to physical search.

(3) “Foreign Intelligence Surveillance Court” means the court established by section 103(a) of this Act.

(4) “Minimization procedures” with respect to physical search, means—

(A) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purposes and technique of the particular physical search, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 101(e)(1) of this Act, shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand such foreign intelligence information or assess its importance;

(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(D) notwithstanding subparagraphs (A), (B), and (C), with respect to any physical search approved pursuant to section 302(a), procedures that require that no information, material, or property of a United States person shall be disclosed, disseminated, or used for any purpose or retained for longer than 72 hours unless a court order under section 304 is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(5) “Physical search” means any physical intrusion within the United States into premises or property (including examination of the interior of property by technical means) that is intended to result in a seizure, reproduction, inspection, or al-

teration of information, material, or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include (A) "electronic surveillance", as defined in section 101(f) of this Act, or (B) the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 101(f) of this Act.

AUTHORIZATION OF PHYSICAL SEARCHES FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 302. [50 U.S.C. 1822] (a)(1) Notwithstanding any other provision of law, the President, acting through the Attorney General, may authorize physical searches without a court order under this title to acquire foreign intelligence information for periods of up to one year if—

(A) the Attorney General certifies in writing under oath that—

(i) the physical search is solely directed at premises, information, material, or property used exclusively by, or under the open and exclusive control of, a foreign power or powers (as defined in section 101(a) (1), (2), or (3));

(ii) there is no substantial likelihood that the physical search will involve the premises, information, material, or property of a United States person; and

(iii) the proposed minimization procedures with respect to such physical search meet the definition of minimization procedures under paragraphs (1) through (4) of section 301(4); and

(B) the Attorney General reports such minimization procedures and any changes thereto to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate at least 30 days before their effective date, unless the Attorney General determines that immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) A physical search authorized by this subsection may be conducted only in accordance with the certification and minimization procedures adopted by the Attorney General. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate under the provisions of section 306.

(3) The Attorney General shall immediately transmit under seal to the Foreign Intelligence Surveillance Court a copy of the certification. Such certification shall be maintained under security measures established by the Chief Justice of the United States with the concurrence of the Attorney General, in consultation with the Director of Central Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the physical search is made under section 301(4) and section 303; or

(B) the certification is necessary to determine the legality of the physical search under section 305(g).

(4)(A) With respect to physical searches authorized by this subsection, the Attorney General may direct a specified landlord, custodian, or other specified person to—

(i) furnish all information, facilities, or assistance necessary to accomplish the physical search in such a manner as will protect its secrecy and produce a minimum of interference with the services that such landlord, custodian, or other person is providing the target of the physical search; and

(ii) maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the search or the aid furnished that such person wishes to retain.

(B) The Government shall compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid.

(b) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the Foreign Intelligence Surveillance Court. Notwithstanding any other provision of law, a judge of the court to whom application is made may grant an order in accordance with section 304 approving a physical search in the United States of the premises, property, information, or material of a foreign power or an agent of a foreign power for the purpose of collecting foreign intelligence information.

(c) The Foreign Intelligence Surveillance Court shall have jurisdiction to hear applications for and grant orders approving a physical search for the purpose of obtaining foreign intelligence information anywhere within the United States under the procedures set forth in this title, except that no judge shall hear the same application which has been denied previously by another judge designated under section 103(a) of this Act. If any judge so designated denies an application for an order authorizing a physical search under this title, such judge shall provide immediately for the record a written statement of each reason for such decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established under section 103(b).

(d) The court of review established under section 103(b) shall have jurisdiction to review the denial of any application made under this title. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(e) Judicial proceedings under this title shall be concluded as expeditiously as possible. The record of proceedings under this title, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of Central Intelligence.

## APPLICATION FOR AN ORDER

SEC. 303. [50 U.S.C. 1823] (a) Each application for an order approving a physical search under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge of the Foreign Intelligence Surveillance Court. Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements for such application as set forth in this title. Each application shall include—

- (1) the identity of the Federal officer making the application;
- (2) the authority conferred on the Attorney General by the President and the approval of the Attorney General to make the application;
- (3) the identity, if known, or a description of the target of the search, and a detailed description of the premises or property to be searched and of the information, material, or property to be seized, reproduced, or altered;
- (4) a statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that—
  - (A) the target of the physical search is a foreign power or an agent of a foreign power;
  - (B) the premises or property to be searched contains foreign intelligence information; and
  - (C) the premises or property to be searched is owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power;
- (5) a statement of the proposed minimization procedures;
- (6) a statement of the nature of the foreign intelligence sought and the manner in which the physical search is to be conducted;
- (7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive branch officers employed in the area of national security or defense and appointed by the President, by and with the advice and consent of the Senate—
  - (A) that the certifying official deems the information sought to be foreign intelligence information;
  - (B) that a significant purpose<sup>1</sup> of the search is to obtain foreign intelligence information;
  - (C) that such information cannot reasonably be obtained by normal investigative techniques;
  - (D) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and
  - (E) includes a statement explaining the basis for the certifications required by subparagraphs (C) and (D);
- (8) where the physical search involves a search of the residence of a United States person, the Attorney General shall state what investigative techniques have previously been uti-

<sup>1</sup>Section 218 of Public Law 107-56 amended subsection (a)(7)(B), by striking "the purpose" and inserting "a significant purpose". For the repeal of this amendment, see sunset provision in a footnote to section 104(a)(7)(B).

lized to obtain the foreign intelligence information concerned and the degree to which these techniques resulted in acquiring such information; and

(9) a statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, premises, or property specified in the application, and the action taken on each previous application.

(b) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 304.

(d)(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, or the Director of Central Intelligence, the Attorney General shall personally review under subsection (a) an application under that subsection for a target described in section 101(b)(2).

(B) Except when disabled or otherwise unavailable to make a request referred to in subparagraph (A), an official referred to in that subparagraph may not delegate the authority to make a request referred to in that subparagraph.

(C) Each official referred to in subparagraph (A) with authority to make a request under that subparagraph shall take appropriate actions in advance to ensure that delegation of such authority is clearly established in the event such official is disabled or otherwise unavailable to make such request.

(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. Except when disabled or otherwise unavailable to make a determination under the preceding sentence, the Attorney General may not delegate the responsibility to make a determination under that sentence. The Attorney General shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event the Attorney General is disabled or otherwise unavailable to make such determination.

(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) for purposes of making the application under this section.

(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Except when disabled or otherwise unavailable to supervise the making of any modification under the preceding sentence, such official may not delegate the responsibility to supervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation

of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

ISSUANCE OF AN ORDER

SEC. 304. [50 U.S.C. 1824] (a) Upon an application made pursuant to section 303, the judge shall enter an ex parte order as requested or as modified approving the physical search if the judge finds that—

(1) the President has authorized the Attorney General to approve applications for physical searches for foreign intelligence purposes;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the physical search is a foreign power or an agent of a foreign power, except that no United States person may be considered an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) the premises or property to be searched is owned, used, possessed by, or is in transit to or from an agent of a foreign power or a foreign power;

(4) the proposed minimization procedures meet the definition of minimization contained in this title; and

(5) the application which has been filed contains all statements and certifications required by section 303, and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 303(a)(7)(E) and any other information furnished under section 303(c).

(b) In determining whether or not probable cause exists for purposes of an order under subsection (a)(3), a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

(c) An order approving a physical search under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the physical search;

(B) the nature and location of each of the premises or property to be searched;

(C) the type of information, material, or property to be seized, altered, or reproduced;

(D) a statement of the manner in which the physical search is to be conducted and, whenever more than one physical search is authorized under the order, the authorized scope of each search and what minimization procedures shall apply to the information acquired by each search; and

(E) the period of time during which physical searches are approved; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or assistance necessary to accomplish the physical search in such a manner as will protect its secrecy and produce a minimum of interference with the services that such landlord, custodian, or other person is providing the target of the physical search;

(C) that such landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the search or the aid furnished that such person wishes to retain;

(D) that the applicant compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid; and

(E) that the Federal officer conducting the physical search promptly report to the court the circumstances and results of the physical search.

(d)(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for 90<sup>1</sup> days, whichever is less, except that (A)<sup>1</sup> an order under this section shall approve a physical search targeted against a foreign power, as defined in paragraph (1), (2), or (3) of section 101(a), for the period specified in the application or for one year, whichever is less, and (B) an order under this section for a physical search targeted against an agent of a foreign power as defined in section 101(b)(1)(A) may be for the period specified in the application or for 120 days, whichever is less<sup>1</sup>.

(2) Extensions of an order issued under this title may be granted on the same basis as the original order upon an application for an extension and new findings made in the same manner as required for the original order, except that an extension of an order under this Act for a physical search targeted against a foreign power, as defined in section 101(a) (5) or (6), or against a foreign person, as defined in section 101(a)(4), that is not a United States person, or against an agent of a foreign power as defined in section 101(b)(1)(A),<sup>2</sup> may be for a period not to exceed one year if the judge finds probable cause to believe that no property of any individual United States person will be acquired during the period.

(3) At or before the end of the period of time for which a physical search is approved by an order or an extension, or at any time after a physical search is carried out, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e)(1)(A) Notwithstanding any other provision of this title, whenever the Attorney General reasonably makes the determination specified in subparagraph (B), the Attorney General may authorize the execution of an emergency physical search if—

(i) a judge having jurisdiction under section 103 is informed by the Attorney General or the Attorney General's designee at the time of such authorization that the decision has been made to execute an emergency search, and

(ii) an application in accordance with this title is made to that judge as soon as practicable but not more than 72 hours after the Attorney General authorizes such search.

(B) The determination referred to in subparagraph (A) is a determination that—

(i) an emergency situation exists with respect to the execution of a physical search to obtain foreign intelligence information before an order authorizing such search can with due diligence be obtained, and

(ii) the factual basis for issuance of an order under this title to approve such a search exists.

<sup>1</sup>Section 207(a)(2) of Public Law 107-56 amended subsection (d)(1), by striking "forty-five" and inserting "90", inserting "(A)" after "except that", and inserting before the period the following: "; and (B) an order under this section for a physical search targeted against an agent of a foreign power as defined in section 101(b)(1)(A) may be for the period specified in the application or for 120 days, whichever is less". For the repeal of these amendments, see sunset provision in a footnote to section 104(a)(7)(B).

<sup>2</sup>Section 207(b)(2) of Public Law 107-56 amended subsection (d)(2), by inserting after "not a United States person," the following: "or against an agent of a foreign power as defined in section 101(b)(1)(A)". For the repeal of this amendment, see sunset provision in a footnote to section 104(a)(7)(B).

(2) If the Attorney General authorizes an emergency search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

(3) In the absence of a judicial order approving such a physical search, the search shall terminate the earlier of—

(A) the date on which the information sought is obtained;

(B) the date on which the application for the order is denied; or

(C) the expiration of 72 hours from the time of authorization by the Attorney General.

(4) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the search, no information obtained or evidence derived from such search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General, if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 302.

(f) Applications made and orders granted under this title shall be retained for a period of at least 10 years from the date of the application.

#### USE OF INFORMATION

SEC. 305. [50 U.S.C. 1825] (a) Information acquired from a physical search conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No information acquired from a physical search pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Where a physical search authorized and conducted pursuant to section 304 involves the residence of a United States person, and, at any time after the search the Attorney General determines there is no national security interest in continuing to maintain the secrecy of the search, the Attorney General shall provide notice to the United States person whose residence was searched of the fact of the search conducted pursuant to this Act and shall identify any property of such person seized, altered, or reproduced during such search.

(c) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(d) Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other pro-

ceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from a physical search pursuant to the authority of this title, the United States shall, prior to the trial, hearing, or the other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

(e) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof against an aggrieved person any information obtained or derived from a physical search pursuant to the authority of this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(f)(1) Any person against whom evidence obtained or derived from a physical search to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such search on the grounds that—

(A) the information was unlawfully acquired; or

(B) the physical search was not made in conformity with an order of authorization or approval.

(2) Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(g) Whenever a court or other authority is notified pursuant to subsection (d) or (e), or whenever a motion is made pursuant to subsection (f), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to a physical search authorized by this title or to discover, obtain, or suppress evidence or information obtained or derived from a physical search authorized by this title, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law, if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the physical search as may be necessary to determine whether the physical search of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security proce-

dures and protective orders, portions of the application, order, or other materials relating to the physical search, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the physical search.

(h) If the United States district court pursuant to subsection (g) determines that the physical search was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the physical search of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the physical search was lawfully authorized or conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Orders granting motions or requests under subsection (h), decisions under this section that a physical search was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the physical search shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

(j)(1) If an emergency execution of a physical search is authorized under section 304(d) and a subsequent order approving the search is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to the search as the judge may determine in his discretion it is in the interests of justice to serve, notice of—

- (A) the fact of the application;
- (B) the period of the search; and
- (C) the fact that during the period information was or was not obtained.

(2) On an ex parte showing of good cause to the judge, the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed 90 days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(k)(1) Federal officers who conduct physical searches to acquire foreign intelligence information under this title may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

- (A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
- (B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or
- (C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 303(a)(7) or the entry of an order under section 304.

#### CONGRESSIONAL OVERSIGHT

**SEC. 306. [50 U.S.C. 1826]** On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all physical searches conducted pursuant to this title. On a semiannual basis the Attorney General shall also provide to those committees and the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding six-month period—

- (1) the total number of applications made for orders approving physical searches under this title;
- (2) the total number of such orders either granted, modified, or denied; and
- (3) the number of physical searches which involved searches of the residences, offices, or personal property of United States persons, and the number of occasions, if any, where the Attorney General provided notice pursuant to section 305(b).

#### PENALTIES

**SEC. 307. [50 U.S.C. 1827]** (a) A person is guilty of an offense if he intentionally—

- (1) under color of law for the purpose of obtaining foreign intelligence information, executes a physical search within the United States except as authorized by statute; or
- (2) discloses or uses information obtained under color of law by physical search within the United States, knowing or having reason to know that the information was obtained through physical search not authorized by statute, for the purpose of obtaining intelligence information.

(b) It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the physical search was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) An offense described in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

(d) There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

#### CIVIL LIABILITY

**SEC. 308. [50 U.S.C. 1828]** An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101 (a) or (b)(1)(A), respectively, of this Act, whose premises, property, information, or material has been subjected to a physical search within the United States or about whom information obtained by such a physical search has been disclosed or used in vio-

lation of section 307 shall have a cause of action against any person who committed such violation and shall be entitled to recover—

- (1) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;
- (2) punitive damages; and
- (3) reasonable attorney's fees and other investigative and litigation costs reasonably incurred.

#### AUTHORIZATION DURING TIME OF WAR

SEC. 309. [50 U.S.C. 1829] Notwithstanding any other provision of law, the President, through the Attorney General, may authorize physical searches without a court order under this title to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by the Congress.

### TITLE IV—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES

#### DEFINITIONS

SEC. 401. [50 U.S.C. 1841] As used in this title:

(1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, and “State” shall have the same meanings as in section 101 of this Act.

(2) The terms “pen register” and “trap and trace device” have the meanings given such terms in section 3127 of title 18, United States Code.

(3) The term “aggrieved person” means any person—

(A) whose telephone line was subject to the installation or use of a pen register or trap and trace device authorized by this title; or

(B) whose communication instrument or device was subject to the use of a pen register or trap and trace device authorized by this title to capture incoming electronic or other communications impulses.

#### PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

SEC. 402. [50 U.S.C. 1842] (a)(1) Notwithstanding any other provision of law, the Attorney General or a designated attorney for the Government may make an application for an order or an extension of an order authorizing or approving the installation and use of a pen register or trap and trace device for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution<sup>1</sup>

<sup>1</sup> Section 214(a)(1) of Public Law 107-56 amended subsection (a)(1), by striking “for any investigation to gather foreign intelligence information or information concerning international terrorism” and inserting “for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted

which is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(2) The authority under paragraph (1) is in addition to the authority under title I of this Act to conduct the electronic surveillance referred to in that paragraph.

(b) Each application under this section shall be in writing under oath or affirmation to—

(1) a judge of the court established by section 103(a) of this Act; or

(2) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications for and grant orders approving the installation and use of a pen register or trap and trace device on behalf of a judge of that court.

(c) Each application under this section shall require the approval of the Attorney General, or a designated attorney for the Government, and shall include—

(1) the identity of the Federal officer seeking to use the pen register or trap and trace device covered by the application; and

(2) a certification by the applicant that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.<sup>2</sup>

(d)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the installation and use of a pen register or trap and trace device if the judge finds that the application satisfies the requirements of this section.

(2) An order issued under this section—

solely upon the basis of activities protected by the first amendment to the Constitution". For the repeal of this amendment, see sunset provision in a footnote to section 104(a)(7)(B).

<sup>2</sup>Paragraphs (2) and (3) of section 214(a) of Public Law 107-56 amended subsection (c)(2) in its entirety and repeals paragraph (3), respectively. Paragraphs (2) and (3) of this subsection prior to the enactment of such public law is as follows:

(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing foreign intelligence or international terrorism investigation being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General; and

(3) information which demonstrates that there is reason to believe that the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device, has been or is about to be used in communication with—

(A) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States; or

(B) a foreign power or agent of a foreign power under circumstances giving reason to believe that the communication concerns or concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States.

For the repeal of these amendments, see sunset provision in a footnote to section 104(a)(7)(B).

(A)<sup>1</sup> shall specify—

(i) the identity, if known, of the person who is the subject of the investigation;

(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order.

(B) shall direct that—

(i) upon request of the applicant, the provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish any information, facilities, or technical assistance necessary to accomplish the installation and operation of the pen register or trap and trace device in such a manner as will protect its secrecy and produce a minimum amount of interference with the services that such provider, landlord, custodian, or other person is providing the person concerned;

(ii) such provider, landlord, custodian, or other person—

(I) shall not disclose the existence of the investigation or of the pen register or trap and trace device to any person unless or until ordered by the court; and

(II) shall maintain, under security procedures approved by the Attorney General and the Director of Central Intelligence pursuant to section 105(b)(2)(C) of this Act, any records concerning the pen register or trap and trace device or the aid furnished; and

(iii) the applicant shall compensate such provider, landlord, custodian, or other person for reasonable expenses incurred by such provider, landlord, custodian, or other person in providing such information, facilities, or technical assistance.

(e) An order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days. Extensions of such an order may be

<sup>1</sup> Section 214(a)(4) of Public Law 107-56 amended subsection (d)(2)(A) in its entirety. Subparagraph (A) prior to the enactment of such public law is as follows:

(A) shall specify—

(i) the identity, if known, of the person who is the subject of the foreign intelligence or international terrorism investigation;

(ii) in the case of an application for the installation and use of a pen register or trap and trace device with respect to a telephone line—

(I) the identity, if known, of the person to whom is leased or in whose name the telephone line is listed; and

(II) the number and, if known, physical location of the telephone line; and

(iii) in the case of an application for the use of a pen register or trap and trace device with respect to a communication instrument or device not covered by clause (ii)—

(I) the identity, if known, of the person who owns or leases the instrument or device or in whose name the instrument or device is listed; and

(II) the number of the instrument or device; and

For the repeal of this amendment, see sunset provision in a footnote to section 104(a)(7)(B).

granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d). The period of extension shall be for a period not to exceed 90 days.

(f) No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance under subsection (d) in accordance with the terms of an order issued under this section.

(g) Unless otherwise ordered by the judge, the results of a pen register or trap and trace device shall be furnished at reasonable intervals during regular business hours for the duration of the order to the authorized Government official or officials.

#### AUTHORIZATION DURING EMERGENCIES

**SEC. 403. [50 U.S.C. 1843]** (a) Notwithstanding any other provision of this title, when the Attorney General makes a determination described in subsection (b), the Attorney General may authorize the installation and use of a pen register or trap and trace device on an emergency basis to gather foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution<sup>1</sup> if—

(1) a judge referred to in section 402(b) of this Act is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to install and use the pen register or trap and trace device, as the case may be, on an emergency basis; and

(2) an application in accordance with section 402 of this Act is made to such judge as soon as practicable, but not more than 48 hours, after the Attorney General authorizes the installation and use of the pen register or trap and trace device, as the case may be, under this section.

(b) A determination under this subsection is a reasonable determination by the Attorney General that—

(1) an emergency requires the installation and use of a pen register or trap and trace device to obtain foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution<sup>1</sup> before an order authorizing the installation and use of

<sup>1</sup> Section 214(b) of Public Law 107-56 amended subsection (a), by striking "foreign intelligence information or information concerning international terrorism" and inserting "foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution" and subsection (b)(1), by striking "foreign intelligence information or information concerning international terrorism" and inserting "foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution". For the repeal of these amendments, see sunset provision in a footnote to section 104(a)(7)(B).

the pen register or trap and trace device, as the case may be, can with due diligence be obtained under section 402 of this Act; and

(2) the factual basis for issuance of an order under such section 402 to approve the installation and use of the pen register or trap and trace device, as the case may be, exists.

(c)(1) In the absence of an order applied for under subsection (a)(2) approving the installation and use of a pen register or trap and trace device authorized under this section, the installation and use of the pen register or trap and trace device, as the case may be, shall terminate at the earlier of—

(A) when the information sought is obtained;

(B) when the application for the order is denied under section 402 of this Act; or

(C) 48 hours after the time of the authorization by the Attorney General.

(2) In the event that an application for an order applied for under subsection (a)(2) is denied, or in any other case where the installation and use of a pen register or trap and trace device under this section is terminated and no order under section 402 of this Act is issued approving the installation and use of the pen register or trap and trace device, as the case may be, no information obtained or evidence derived from the use of the pen register or trap and trace device, as the case may be, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from the use of the pen register or trap and trace device, as the case may be, shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

#### AUTHORIZATION DURING TIME OF WAR

SEC. 404. [50 U.S.C. 1844] Notwithstanding any other provision of law, the President, through the Attorney General, may authorize the use of a pen register or trap and trace device without a court order under this title to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by Congress.

#### USE OF INFORMATION

SEC. 405. [50 U.S.C. 1845] (a)(1) Information acquired from the use of a pen register or trap and trace device installed pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the provisions of this section.

(2) No information acquired from a pen register or trap and trace device installed and used pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this title, the United States shall, before the trial, hearing, or the other proceeding or at a reasonable time before an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

(d) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the State or political subdivision thereof against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e)(1) Any aggrieved person against whom evidence obtained or derived from the use of a pen register or trap and trace device is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, or a State or political subdivision thereof, may move to suppress the evidence obtained or derived from the use of the pen register or trap and trace device, as the case may be, on the grounds that—

(A) the information was unlawfully acquired; or

(B) the use of the pen register or trap and trace device, as the case may be, was not made in conformity with an order of authorization or approval under this title.

(2) A motion under paragraph (1) shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the aggrieved person concerned was not aware of the grounds of the motion.

(f)(1) Whenever a court or other authority is notified pursuant to subsection (c) or (d), whenever a motion is made pursuant to subsection (e), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to the use of a pen register or trap and trace device authorized by this title or to discover, obtain, or suppress evidence or information obtained or derived from the use of a pen register or trap and trace device authorized by this

title, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law and if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the use of the pen register or trap and trace device, as the case may be, as may be necessary to determine whether the use of the pen register or trap and trace device, as the case may be, was lawfully authorized and conducted.

(2) In making a determination under paragraph (1), the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the use of the pen register or trap and trace device, as the case may be, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the use of the pen register or trap and trace device, as the case may be.

(g)(1) If the United States district court determines pursuant to subsection (f) that the use of a pen register or trap and trace device was not lawfully authorized or conducted, the court may, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the use of the pen register or trap and trace device, as the case may be, or otherwise grant the motion of the aggrieved person.

(2) If the court determines that the use of the pen register or trap and trace device, as the case may be, was lawfully authorized or conducted, it may deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Orders granting motions or requests under subsection (g), decisions under this section that the use of a pen register or trap and trace device was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the installation and use of a pen register or trap and trace device shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

#### CONGRESSIONAL OVERSIGHT

SEC. 406. [50 U.S.C. 1846] (a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all uses of pen registers and trap and trace devices pursuant to this title.

(b) On a semiannual basis, the Attorney General shall also provide to the committees referred to in subsection (a) and to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

(1) the total number of applications made for orders approving the use of pen registers or trap and trace devices under this title; and

(2) the total number of such orders either granted, modified, or denied.

TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR  
FOREIGN INTELLIGENCE PURPOSES<sup>1</sup>

**SEC. 501. [50 U.S.C. 1861] ACCESS TO CERTAIN BUSINESS RECORDS  
FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.**

(a)(1) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(2) An investigation conducted under this section shall—

(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(b) Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 103(a);

or

(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

(2) shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

(c)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

(d) No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this

<sup>1</sup> Section 215 of Public Law 107-56 repealed sections 501 through 503 and inserted new sections 501 and 502. For the repeal of this amendment, see sunset provision in a footnote to section 104(a)(7)(B). Sections 501(a)(1) and 502, as added by section 215 of Public Law 107-56, were amended by paragraphs (6) and (7) of section 314(a) of Public Law 107-108 (115 Stat. 1402). Sections 501 through 503 prior to the enactment of Public Law 107-56 are shown in 8 point typesize following section 502, as added.

section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.

(e) A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

**SEC. 502. [50 U.S.C. 1862] CONGRESSIONAL OVERSIGHT.**

(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for the production of tangible things under section 501.

(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

(1) the total number of applications made for orders approving requests for the production of tangible things under section 501; and

(2) the total number of such orders either granted, modified, or denied.

**Note:** See footnote to the heading of title V. Sections 501 through 503 prior to the enactment of Public Law 107-56 are as follows:

DEFINITIONS

SEC. 501. [50 U.S.C. 1861] As used in this title:

(1) The terms “foreign power”, “agent of a foreign power”, “foreign intelligence information”, “international terrorism”, and “Attorney General” shall have the same meanings as in section 101 of this Act.

(2) The term “common carrier” means any person or entity transporting people or property by land, rail, water, or air for compensation.

(3) The term “physical storage facility” means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof.

(4) The term “public accommodation facility” means any inn, hotel, motel, or other establishment that provides lodging to transient guests.

(5) The term “vehicle rental facility” means any person or entity that provides vehicles for rent, lease, loan, or other similar use to the public or any segment thereof.

ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

SEC. 502. [50 U.S.C. 1862] (a) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order authorizing a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to release records in its possession for an investigation to gather foreign intelligence information or an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(b) Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 103(a) of this Act; or

(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for

the release of records under this section on behalf of a judge of that court; and

(2) shall specify that—

(A) the records concerned are sought for an investigation described in subsection (a); and

(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.

(c)(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application satisfies the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

(d)(1) Any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall comply with an order under subsection (c).

(2) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or officer, employee, or agent thereof, shall disclose to any person (other than those officers, agents, or employees of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section) that the Federal Bureau of Investigation has sought or obtained records pursuant to an order under this section.

#### CONGRESSIONAL OVERSIGHT

SEC. 503. [50 U.S.C. 1863] (a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for records under this title.

(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

(1) the total number of applications made for orders approving requests for records under this title; and

(2) the total number of such orders either granted, modified, or denied.

### TITLE VI—EFFECTIVE DATE

#### EFFECTIVE DATE

SEC. 601. [50 U.S.C. 1801 nt] The provisions of this Act (other than titles III, IV, and V) and the amendments made hereby shall become effective upon the date of enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act within ninety days following the designation of the first judge pursuant to section 103 of this Act.

[NOTE: For related provisions to FISA, see *infra* page 1017.]



## **CLASSIFIED INFORMATION PROCEDURES ACT**

(Public Law 96-456; 94 Stat. 2025; approved October 15, 1980)

AN ACT To provide certain pretrial, trial, and appellate procedures for criminal cases involving classified information.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### DEFINITIONS

SECTION 1. (a) "Classified information", as used in this Act, means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(b) "National security", as used in this Act, means the national defense and foreign relations of the United States.

### PRETRIAL CONFERENCE

SEC. 2. At any time after the filing of the indictment or information, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution. Following such motion, or on its own motion, the court shall promptly hold a pretrial conference to establish the timing of requests for discovery, the provision of notice required by section 5 of this Act, and the initiation of the procedure established by section 6 of this Act. In addition, at the pretrial conference the court may consider any matters which relate to classified information or which may promote a fair and expeditious trial. No admission made by the defendant or by any attorney for the defendant at such a conference may be used against the defendant unless the admission is in writing and is signed by the defendant and by the attorney for the defendant.

### PROTECTIVE ORDERS

SEC. 3. Upon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States.

### DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS

SEC. 4. The court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be made available to the defendant through discovery under the Federal Rules of Criminal Procedure, to sub-

stitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

NOTICE OF DEFENDANT'S INTENTION TO DISCLOSE CLASSIFIED  
INFORMATION

SEC. 5. (a) NOTICE BY DEFENDANT.—If a defendant reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant, the defendant shall, within the time specified by the court or, where no time is specified, within thirty days prior to trial, notify the attorney for the United States and the court in writing. Such notice shall include a brief description of the classified information. Whenever a defendant learns of additional classified information he reasonably expects to disclose at any such proceeding, he shall notify the attorney for the United States and the court in writing as soon as possible thereafter and shall include a brief description of the classified information. No defendant shall disclose any information known or believed to be classified in connection with a trial or pretrial proceeding until notice has been given under this subsection and until the United States has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 6 of this Act, and until the time for the United States to appeal such determination under section 7 has expired or any appeal under section 7 by the United States is decided.

(b) FAILURE TO COMPLY.—If the defendant fails to comply with the requirements of subsection (a) the court may preclude disclosure of any classified information not made the subject of notification and may prohibit the examination by the defendant of any witness with respect to any such information.

PROCEDURE FOR CASES INVOLVING CLASSIFIED INFORMATION

SEC. 6. (a) MOTION FOR HEARING.—Within the time specified by the court for the filing of a motion under this section, the United States may request the court to conduct a hearing to make all determinations concerning the use, relevance, or admissibility of classified information that would otherwise be made during the trial or pretrial proceeding. Upon such a request, the court shall conduct such a hearing. Any hearing held pursuant to this subsection (or any portion of such hearing specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information. As to each item of classified information, the court shall set forth in writing the basis for its determination. Where the United States' motion under this subsection is filed prior to the trial or pretrial proceeding, the court shall rule prior to the commencement of the relevant proceeding.

(b) NOTICE.—(1) Before any hearing is conducted pursuant to a request by the United States under subsection (a), the United States shall provide the defendant with notice of the classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the defendant by the United States. When, the United States has not previously made the information available to the defendant in connection with the case, the information may be described by generic category, in such form as the court may approve, rather than by identification of the specific information of concern to the United States.

(2) Whenever the United States requests a hearing under subsection (a), the court, upon request of the defendant, may order the United States to provide the defendant, prior to trial, such details as to the portion of the indictment or information at issue in the hearing as are needed to give the defendant fair notice to prepare for the hearing.

(c) ALTERNATIVE PROCEDURE FOR DISCLOSURE OF CLASSIFIED INFORMATION.—(1) Upon any determination by the court authorizing the disclosure of specific classified information under the procedures established by this section, the United States may move that, in lieu of the disclosure of such specific classified information, the court order—

(A) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove; or

(B) the substitution for such classified information of a summary of the specific classified information.

The court shall grant such a motion of the United States if it finds that the statement or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information. The court shall hold a hearing on any motion under this section. Any such hearing shall be held in camera at the request of the Attorney General.

(2) The United States may, in connection with a motion under paragraph (1), submit to the court an affidavit of the Attorney General certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the United States, the court shall examine such affidavit in camera and ex parte.

(d) SEALING OF RECORDS OF IN CAMERA HEARINGS.—If at the close of an in camera hearing under this Act (or any portion of a hearing under this Act that is held in camera) the court determines that the classified information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing shall be sealed and preserved by the court for use in the event of an appeal. The defendant may seek reconsideration of the court's determination prior to or during trial.

(e) PROHIBITION ON DISCLOSURE OF CLASSIFIED INFORMATION BY DEFENDANT, RELIEF FOR DEFENDANT WHEN UNITED STATES OPPOSES DISCLOSURE.—(1) Whenever the court denies a motion by the United States that it issue an order under subsection (c) and the United States files with the court an affidavit of the Attorney General objecting to disclosure of the classified information at issue,

the court shall order that the defendant not disclose or cause the disclosure of such information.

(2) Whenever a defendant is prevented by an order under paragraph (1) from disclosing or causing the disclosure of classified information, the court shall dismiss the indictment or information; except that, when the court determines that the interests of justice would not be served by dismissal of the indictment or information, the court shall order such other action, in lieu of dismissing the indictment or information, as the court determines is appropriate. Such action may include, but need not be limited to—

(A) dismissing specified counts of the indictment or information;

(B) finding against the United States on any issue as to which the excluded classified information relates; or

(C) striking or precluding all or part of the testimony of a witness.

An order under this paragraph shall not take effect until the court has afforded the United States an opportunity to appeal such order under section 7, and thereafter to withdraw its objection to the disclosure of the classified information at issue.

(f) RECIPROCITY.—Whenever the court determines pursuant to subsection (a) that classified information may be disclosed in connection with a trial or pretrial proceeding, the court shall, unless the interests of fairness do not so require, order the United States to provide the defendant with the information it expects to use to rebut the classified information. The court may place the United States under a continuing duty to disclose such rebuttal information. If the United States fails to comply with its obligation under this subsection, the court may exclude any evidence not made the subject of a required disclosure and may prohibit the examination by the United States of any witness with respect to such information.

#### INTERLOCUTORY APPEAL

SEC. 7. (a) An interlocutory appeal by the United States taken before or after the defendant has been placed in jeopardy shall lie to a court of appeals from a decision or order of a district court in a criminal case authorizing the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

(b) An appeal taken pursuant to this section either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved and the court of appeals (1) shall hear argument on such appeal within four days of the adjournment of the trial, (2) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (3) shall render its decision within four days of argument on appeal, and (4) may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal

from a judgment of conviction to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

#### INTRODUCTION OF CLASSIFIED INFORMATION

SEC. 8. (a) CLASSIFIED STATUS.—Writings, recordings, and photographs containing classified information may be admitted into evidence without change in their classification status.

(b) PRECAUTIONS BY COURT.—The court, in order to prevent unnecessary disclosure of classified information involved in any criminal proceeding, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein, unless the whole ought in fairness be considered.

(c) TAKING OF TESTIMONY.—During the examination of a witness in any criminal proceeding, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring the United States to provide the court with a proffer of the witness' response to the question or line of inquiry and requiring the defendant to provide the court with a proffer of the nature of the information he seeks to elicit.

#### SECURITY PROCEDURES

SEC. 9. (a) Within one hundred and twenty days of the date of the enactment of this Act, the Chief Justice of the United States, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense, shall prescribe rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States district courts, courts of appeals, or Supreme Court. Such rules, and any changes in such rules, shall be submitted to the appropriate committees of Congress and shall become effective forty-five days after such submission.

(b) Until such time as rules under subsection (a) first become effective, the Federal courts shall in each case involving classified information adopt procedures to protect against the unauthorized disclosure of such information.

#### COORDINATION REQUIREMENTS RELATING TO THE PROSECUTION OF CASES INVOLVING CLASSIFIED INFORMATION

SEC. 9A. (a) BRIEFINGS REQUIRED.—The Assistant Attorney General for the Criminal Division and the appropriate United States attorney, or the designees of such officials, shall provide briefings to the senior agency official, or the designee of such official, with respect to any case involving classified information that originated in the agency of such senior agency official.

(b) TIMING OF BRIEFINGS.—Briefings under subsection (a) with respect to a case shall occur—

(1) as soon as practicable after the Department of Justice and the United States attorney concerned determine that a prosecution or potential prosecution could result; and

(2) at such other times thereafter as are necessary to keep the senior agency official concerned fully and currently informed of the status of the prosecution.

(c) SENIOR AGENCY OFFICIAL DEFINED.—In this section, the term “senior agency official” has the meaning given that term in section 1.1 of Executive Order No. 12958.

IDENTIFICATION OF INFORMATION RELATED TO THE NATIONAL  
DEFENSE

SEC. 10. In any prosecution in which the United States must establish that material relates to the national defense or constitutes classified information, the United States shall notify the defendant, within the time before trial specified by the court, of the portions of the material that it reasonably expects to rely upon to establish the national defense or classified information element of the offense.

AMENDMENT TO THE ACT

SEC. 11. Sections 1 through 10 of this Act may be amended as provided in section 2076, title 28, United States Code.

ATTORNEY GENERAL GUIDELINES

SEC. 12. (a) Within one hundred and eighty days of enactment of this Act, the Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in rendering a decision whether to prosecute a violation of Federal law in which, in the judgment of the Attorney General, there is a possibility that classified information will be revealed. Such guidelines shall be transmitted to the appropriate committees of Congress.

(b) When the Department of Justice decides not to prosecute a violation of Federal law pursuant to subsection (a), an appropriate official of the Department of Justice shall prepare written findings detailing the reasons for the decision not to prosecute. The findings shall include—

(1) the intelligence information which the Department of Justice officials believe might be disclosed,

(2) the purpose for which the information might be disclosed,

(3) the probability that the information would be disclosed, and

(4) the possible consequences such disclosure would have on the national security.

REPORTS TO CONGRESS

SEC. 13. (a) Consistent with applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches, the Attorney General shall report orally or in writing semiannually to the Permanent Select Committee on Intelligence of the United States House of Representatives, the Select Committee on Intelligence of the United States Senate, and the chairmen and ranking minority members of the Committees on the

Judiciary of the Senate and House of Representatives on all cases where a decision not to prosecute a violation of Federal law pursuant to section 12(a) has been made.

(b) In the case of the semiannual reports (whether oral or written) required to be submitted under subsection (a) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947.

(c) The Attorney General shall deliver to the appropriate committees of Congress a report concerning the operation and effectiveness of this Act and including suggested amendments to this Act. For the first three years this Act is in effect, there shall be a report each year. After three years, such reports shall be delivered as necessary.

FUNCTIONS OF ATTORNEY GENERAL MAY BE EXERCISED BY DEPUTY ATTORNEY GENERAL OR A DESIGNATED ASSISTANT ATTORNEY GENERAL

SEC. 14. The functions and duties of the Attorney General under this Act may be exercised by the Deputy Attorney General or by an Assistant Attorney General designated by the Attorney General for such purpose and may not be delegated to any other official.

EFFECTIVE DATE

SEC. 15. The provisions of this Act shall become effective upon the date of the enactment of this Act, but shall not apply to any prosecution in which an indictment or information was filed before such date.

SHORT TITLE

SEC. 16. That this Act may be cited as the "Classified Information Procedures Act".

**INTELLIGENCE IDENTITIES PROTECTION ACT OF 1982**

[NOTE: For text of Act, see title VI of the National Security Act of 1947, ante page 51.]

## CENTRAL INTELLIGENCE AGENCY INFORMATION ACT

(Public Law 98-477; 98 Stat. 2209; approved October 15, 1984)

AN ACT To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Central Intelligence Agency Information Act".

SEC. 2. [Subsections (a) and (b) added title VII to the National Security Act of 1947.]

(c) Subsection (q) of section 552a of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(q)"; and

(2) by adding at the end thereof the following:

"(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title."

SEC. 3. [50 U.S.C. 432 nt] (a) The Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist, shall prepare and submit by June 1, 1985, a report on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value.

(b)(1) The Director shall, once each six months, prepare and submit an unclassified report which includes—

(A) a description of the specific measures established by the Director to improve the processing of requests under section 552 of title 5, United States Code;

(B) the current budgetary and personnel allocations for such processing;

(C) the number of such requests (i) received and processed during the preceding six months, and (ii) pending at the time of submission of such report; and

(D) an estimate of the current average response time for completing the processing of such requests.

(2) The first report required by paragraph (1) shall be submitted by a date which is six months after the date of enactment of this Act. The requirements of such paragraph shall cease to apply after the submission of the fourth such report.

(c) Each of the reports required by subsections (a) and (b) shall be submitted to the Permanent Select Committee on Intelligence and the Committee on Government Operations<sup>1</sup> of the House of

<sup>1</sup>The Committee on Government Operations was renamed to the Committee on Government Reform and Oversight by H. Res. 6 in the 104th Congress, and renamed the Committee on Government Reform by H. Res. 5 in the 106th Congress.

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Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 4. [50 U.S.C. 431 nt] The amendments made by subsections (a) and (b) of section 2 shall be effective upon enactment of this Act and shall apply with respect to any requests for records, whether or not such request was made prior to such enactment, and shall apply to all civil actions not commenced prior to February 7, 1984.

**SECTION 137 OF TITLE 10, UNITED STATES CODE**

**§ 137. Under Secretary of Defense for Intelligence**

(a) There is an Under Secretary of Defense for Intelligence, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Intelligence shall perform such duties and exercise such powers as the Secretary of Defense may prescribe in the area of intelligence.

(c) The Under Secretary of Defense for Intelligence takes precedence in the Department of Defense after the Under Secretary of Defense for Personnel and Readiness.



**CHAPTER 21 OF TITLE 10, U.S.C.**  
**CHAPTER 21—DEPARTMENT OF DEFENSE**  
**INTELLIGENCE MATTERS**

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**SUBCHAPTER I—GENERAL MATTERS**

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**SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES**

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432. Use, disposition, and auditing of funds.	
433. Relationship with other Federal laws.	
434. Reservation of defenses and immunities.	
435. Limitations.	
436. Regulations.	
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**§ 431. Authority to engage in commercial activities as security for intelligence collection activities**

(a) **AUTHORITY.**—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, 2004.

(b) **INTERAGENCY COORDINATION AND SUPPORT.**—Any such activity shall—

(1) be coordinated with, and (where appropriate) be supported by, the Director of Central Intelligence; and

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) **DEFINITIONS.**—In this subchapter:

(1) The term “commercial activities” means activities that are conducted in a manner consistent with prevailing commercial practices and includes—

(A) the acquisition, use, sale, storage and disposal of goods and services;

(B) entering into employment contracts and leases and other agreements for real and personal property;

(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

(D) acquiring licenses, registrations, permits, and insurance; and

(E) establishing corporations, partnerships, and other legal entities.

(2) The term “intelligence collection activities” means the collection of foreign intelligence and counterintelligence information.

#### **§ 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 promptly reported to 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 non-appropriated 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.

#### **§ 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.

#### **§ 435. Limitations**

(a) **LAWFUL ACTIVITIES.**—Nothing in this subchapter authorizes the conduct of any intelligence activity that is not otherwise authorized by law or Executive order.

(b) **DOMESTIC ACTIVITIES.**—Personnel conducting commercial activity authorized by this subchapter may only engage in those activities in the United States to the extent necessary to support intelligence activities abroad.

(c) **PROVIDING GOODS AND SERVICES TO THE DEPARTMENT OF DEFENSE.**—Commercial activity may not be undertaken within the United States for the purpose of providing goods and services to the Department of Defense, other than as may be necessary to provide security for the activities subject to this subchapter.

(d) **NOTICE TO UNITED STATES PERSONS.**—(1) In carrying out a commercial activity authorized under this subchapter, the Secretary of Defense may not permit an entity engaged in such activity to employ a United States person in an operational, managerial, or supervisory position, and may not assign or detail a United States person to perform operational, managerial, or supervisory duties for such an entity, unless that person is informed in advance of the intelligence security purpose of that activity.

(2) In this subsection, the term “United States person” means an individual who is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

#### **§ 436. Regulations**

The Secretary of Defense shall prescribe regulations to implement the authority provided in this subchapter. Such regulations shall be consistent with this subchapter and shall at a minimum—

(1) specify all elements of the Department of Defense who are authorized to engage in commercial activities pursuant to this subchapter;

(2) require the personal approval of the Secretary or Deputy Secretary of Defense for all sensitive activities to be authorized pursuant to this subchapter;

(3) specify all officials who are authorized to grant waivers of laws or regulations pursuant to section 433(b) of this title, or to approve the establishment or conduct of commercial activities pursuant to this subchapter;

(4) designate a single office within the Defense Intelligence Agency to be responsible for the management and supervision of all activities authorized under this subchapter;

(5) require that each commercial activity proposed to be authorized under this subchapter be subject to appropriate legal review before the activity is authorized; and

(6) provide for appropriate internal audit controls and oversight for such activities.

#### **§ 437. Congressional oversight**

(a) PROPOSED REGULATIONS.—Copies of regulations proposed to be prescribed under section 436 of this title (including any proposed revision to such regulations) shall be submitted to the intelligence committees not less than 30 days before they take effect.

(b) CURRENT INFORMATION.—Consistent with title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Secretary of Defense shall ensure that the intelligence committees are kept fully and currently informed of actions taken pursuant to this subchapter, including any significant anticipated activity to be authorized pursuant to this subchapter. The Secretary shall promptly notify the appropriate committees of Congress whenever a corporation, partnership, or other legal entity is established pursuant to this subchapter.

(c) ANNUAL REPORT.—Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report on all commercial activities authorized under this subchapter that were undertaken during the previous fiscal year. Such report shall include (with respect to the fiscal year covered by the report)—

(1) a description of any exercise of the authority provided by section 433(b) of this title;

(2) a description of any expenditure of funds made pursuant to this subchapter (whether from appropriated or non-appropriated funds); and

(3) a description of any actions taken with respect to audits conducted pursuant to section 432 of this title to implement recommendations or correct deficiencies identified in such audits.

**CHAPTER 22 OF TITLE 10, U.S.C.**

**CHAPTER 22—NATIONAL IMAGERY AND MAPPING  
AGENCY**

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**SUBCHAPTER I—MISSIONS AND AUTHORITY**

Sec.	
441.	Establishment.
442.	Missions.
443.	Imagery intelligence and geospatial information: support for foreign countries.
444.	Support from Central Intelligence Agency.
[445.	Repealed.]

**§ 441. Establishment**

(a) ESTABLISHMENT.—The National Imagery and Mapping Agency is a combat support agency of the Department of Defense and has significant national missions.

(b) DIRECTOR.—(1) The Director of the National Imagery and Mapping Agency is the head of the agency.

(2) Upon a vacancy in the position of Director, the Secretary of Defense shall recommend to the President an individual for appointment to the position.

(3) If an officer of the armed forces on active duty is appointed to the position of Director, the position shall be treated as having been designated by the President as a position of importance and responsibility for purposes of section 601 of this title and shall carry the grade of lieutenant general, or, in the case of an officer of the Navy, vice admiral.

(c) DIRECTOR OF CENTRAL INTELLIGENCE COLLECTION TASKING AUTHORITY.—Unless otherwise directed by the President, the Director of Central Intelligence shall have authority (except as otherwise agreed by the Director and the Secretary of Defense) to—

(1) approve collection requirements levied on national imagery collection assets;

(2) determine priorities for such requirements; and

(3) resolve conflicts in such priorities.

(d) AVAILABILITY AND CONTINUED IMPROVEMENT OF IMAGERY INTELLIGENCE SUPPORT TO ALL-SOURCE ANALYSIS AND PRODUCTION FUNCTION.—The Secretary of Defense, in consultation with the Director of Central Intelligence, shall take all necessary steps to ensure the full availability and continued improvement of imagery intelligence support for all-source analysis and production.

**§ 442. Missions**

(a) NATIONAL SECURITY MISSIONS.—(1) The National Imagery and Mapping Agency shall, in support of the national security objectives of the United States, provide the following:

- (A) Imagery.
- (B) Imagery intelligence.
- (C) Geospatial information.

(2) Imagery, intelligence, and information provided in carrying out paragraph (1) shall be timely, relevant, and accurate.

(b) NAVIGATION INFORMATION.—The National Imagery and Mapping Agency shall improve means of navigating vessels of the Navy and the merchant marine by providing, under the authority of the Secretary of Defense, accurate and inexpensive nautical charts, sailing directions, books on navigation, and manuals of instructions for the use of all vessels of the United States and of navigators generally.

(c) MAPS, CHARTS, ETC.—The National Imagery and Mapping Agency shall prepare and distribute maps, charts, books, and geodetic products as authorized under subchapter II of this chapter.

(d) NATIONAL MISSIONS.—The National Imagery and Mapping Agency also has national missions as specified in section 120(a) of the National Security Act of 1947.

(e) SYSTEMS.—The National Imagery and Mapping Agency may, in furtherance of a mission of the Agency, design, develop, deploy, operate, and maintain systems related to the processing and dissemination of imagery intelligence and geospatial information that may be transferred to, accepted or used by, or used on behalf of—

- (1) the armed forces, including any combatant command, component of a combatant command, joint task force, or tactical unit; or
- (2) any other department or agency of the United States.

**§ 443. Imagery intelligence and geospatial information: support for foreign countries**

(a) USE OF APPROPRIATED FUNDS.—The Director of the National Imagery and Mapping Agency may use appropriated funds available to the National Imagery and Mapping Agency to provide foreign countries with imagery intelligence and geospatial information support.

(b) USE OF FUNDS OTHER THAN APPROPRIATED FUNDS.—The Director may use funds other than appropriated funds to provide foreign countries with imagery intelligence and geospatial information support, notwithstanding provisions of law relating to the expenditure of funds of the United States, except that—

- (1) no such funds may be expended, in whole or in part, by or for the benefit of the National Imagery and Mapping Agency for a purpose for which Congress had previously denied funds;
- (2) proceeds from the sale of imagery intelligence or geospatial information items may be used only to purchase replacement items similar to the items that are sold; and

(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

(c) ACCOMMODATION PROCUREMENTS.—The authority under this section may be exercised to conduct accommodation procurements on behalf of foreign countries.

(d) COORDINATION WITH DIRECTOR OF CENTRAL INTELLIGENCE.—The Director of the Agency shall coordinate with the Director of Central Intelligence any action under this section that involves imagery intelligence or intelligence products or involves providing support to an intelligence or security service of a foreign country.

#### **§ 444. Support from Central Intelligence Agency**

(a) SUPPORT AUTHORIZED.—The Director of Central Intelligence may provide support in accordance with this section to the Director of the National Imagery and Mapping Agency. The Director of the National Imagery and Mapping Agency may accept support provided under this section.

(b) ADMINISTRATIVE AND CONTRACT SERVICES.—(1) In furtherance of the national intelligence effort, the Director of Central Intelligence may provide administrative and contract services to the National Imagery and Mapping Agency as if that agency were an organizational element of the Central Intelligence Agency.

(2) Services provided under paragraph (1) may include the services of security police. For purposes of section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o), an installation of the National Imagery and Mapping Agency that is provided security police services under this section shall be considered an installation of the Central Intelligence Agency.

(3) Support provided under this subsection shall be provided under terms and conditions agreed upon by the Secretary of Defense and the Director of Central Intelligence.

(c) DETAIL OF PERSONNEL.—The Director of Central Intelligence may detail personnel of the Central Intelligence Agency indefinitely to the National Imagery and Mapping Agency without regard to any limitation on the duration of interagency details of Federal Government personnel.

(d) REIMBURSABLE OR NONREIMBURSABLE SUPPORT.—Support under this section may be provided and accepted on either a reimbursable basis or a nonreimbursable basis.

(e) AUTHORITY TO TRANSFER FUNDS.—(1) The Director of the National Imagery and Mapping Agency may transfer funds available for that agency to the Director of Central Intelligence for the Central Intelligence Agency.

(2) The Director of Central Intelligence—

(A) may accept funds transferred under paragraph (1); and

(B) shall expend such funds, in accordance with the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), to provide administrative and contract services or detail personnel to the National Imagery and Mapping Agency under this section.

**[§ 445. Repealed. P.L. 105-107, § 503(c), Nov. 20, 1997, 111 Stat. 2262]**

SUBCHAPTER II—MAPS, CHARTS, AND GEODETIC PRODUCTS<sup>1</sup>

Sec.

- 451. Maps, charts, and books.
- 452. Pilot charts.
- 453. Sale of maps, charts, and navigational publications: prices; use of proceeds.
- 454. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations.
- 455. Maps, charts, and geodetic data: public availability; exceptions.
- 456. Civil actions barred.
- 457. Operational files previously maintained by or concerning activities of National Photographic Interpretation Center: authority to withhold from public disclosure.

**§ 451. Maps, charts, and books**

The Secretary of Defense may—

(1) have the National Imagery and Mapping Agency prepare maps, charts, and nautical books required in navigation and have those materials published and furnished to navigators; and

(2) buy the plates and copyrights of existing maps, charts, books on navigation, and sailing directions and instructions.

**§ 452. Pilot charts**

(a) There shall be conspicuously printed on pilot charts prepared in the National Imagery and Mapping Agency the following: "Prepared from data furnished by the National Imagery and Mapping Agency of the Department of Defense and by the Department of Commerce, and published at the National Imagery and Mapping Agency under the authority of the Secretary of Defense".

(b) The Secretary of Commerce shall furnish to the National Imagery and Mapping Agency, as quickly as possible, all meteorological information received by the Secretary that is necessary for, and of the character used in, preparing pilot charts.

**§ 453. Sale of maps, charts, and navigational publications: prices; use of proceeds**

(a) PRICES.—All maps, charts, and other publications offered for sale by the National Imagery and Mapping Agency shall be sold at prices and under regulations that may be prescribed by the Secretary of Defense.

(b) USE OF PROCEEDS TO PAY FOREIGN LICENSING FEES.—(1) The Secretary of Defense may pay any NIMA foreign data acquisition fee out of the proceeds of the sale of maps, charts, and other publications of the Agency, and those proceeds are hereby made available for that purpose.

<sup>1</sup> Section 8101 of the Department of Defense Appropriations Act, 1999 (P.L. 105-262; 112 Stat. 2320) provides:

SEC. 8101. None of the funds in this Act may be used by the National Imagery and Mapping Agency for mapping, charting, and geodesy activities unless contracts for such services are awarded in accordance with the qualifications based selection process in 40 U.S.C. 541 et seq. and 10 U.S.C. 2855: *Provided*, That such agency may continue to fund existing contracts for such services for not more than 180 days from the date of the enactment of this Act: *Provided further*, That an exception shall be provided for such services that are critical to national security after a written notification has been submitted by the Deputy Secretary of Defense to the Committees on Appropriations of the House of Representatives and the Senate.

(2) In this subsection, the term “NIMA foreign data acquisition fee” means any licensing or other fee imposed by a foreign country or international organization for the acquisition or use of data or products by the National Imagery and Mapping Agency.

**§454. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations**

The Secretary of Defense may authorize the National Imagery and Mapping Agency to exchange or furnish mapping, charting, and geodetic data, supplies and services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.

**§455. Maps, charts, and geodetic data: public availability; exceptions**

(a) The National Imagery and Mapping Agency shall offer for sale maps and charts at scales of 1:500,000 and smaller, except those withheld in accordance with subsection (b) or those specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive order.

(b)(1) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any geodetic product in the possession of, or under the control of, the Department of Defense—

(A) that was obtained or produced, or that contains information that was provided, pursuant to an international agreement that restricts disclosure of such product or information to government officials of the agreeing parties or that restricts use of such product or information to government purposes only;

(B) that contains information that the Secretary of Defense has determined in writing would, if disclosed, reveal sources and methods, or capabilities, used to obtain source material for production of the geodetic product; or

(C) that contains information that the Director of the National Imagery and Mapping Agency has determined in writing would, if disclosed, jeopardize or interfere with ongoing military or intelligence operations, reveal military operational or contingency plans, or reveal, jeopardize, or compromise military or intelligence capabilities.

(2) In this subsection, the term “geodetic product” means imagery, imagery intelligence, or geospatial information.

(c)(1) Regulations to implement this section (including any amendments to such regulations) shall be published in the Federal Register for public comment for a period of not less than 30 days before they take effect.

(2) Regulations under this section shall address the conditions under which release of geodetic products authorized under subsection (b) to be withheld from public disclosure would be appropriate—

(A) in the case of allies of the United States; and

(B) in the case of qualified United States contractors (including contractors that are small business concerns) who need

such products for use in the performance of contracts with the United States.

#### **§ 456. Civil actions barred**

(a) CLAIMS BARRED.—No civil action may be brought against the United States on the basis of the content of a navigational aid prepared or disseminated by the Defense Mapping Agency.

(b) NAVIGATIONAL AIDS COVERED.—Subsection (a) applies with respect to a navigational aid in the form of a map, a chart, or a publication and any other form or medium of product or information in which the Defense Mapping Agency prepares or disseminates navigational aids.

#### **§ 457. Operational files previously maintained by or concerning activities of National Photographic Interpretation Center: authority to withhold from public disclosure**

(a) AUTHORITY.—The Secretary of Defense may withhold from public disclosure operational files described in subsection (b) to the same extent that operational files may be withheld under section 701 of the National Security Act of 1947 (50 U.S.C. 431).

(b) COVERED OPERATIONAL FILES.—The authority under subsection (a) applies to operational files in the possession of the National Imagery and Mapping Agency that—

(1) as of September 22, 1996, were maintained by the National Photographic Interpretation Center; or

(2) concern the activities of the Agency that, as of such date, were performed by the National Photographic Interpretation Center.

(c) OPERATIONAL FILES DEFINED.—In this section, the term “operational files” has the meaning given that term in section 701(b) of the National Security Act of 1947 (50 U.S.C. 431(b)).

### SUBCHAPTER III—PERSONNEL MANAGEMENT

Sec.

461. Management rights.

462. Financial assistance to certain employees in acquisition of critical skills.

#### **§ 461. Management rights**

(a) SCOPE.—If there is no obligation under the provisions of chapter 71 of title 5 for the head of an agency of the United States to consult or negotiate with a labor organization on a particular matter by reason of that matter being covered by a provision of law or a Governmentwide regulation, the Director of the National Imagery and Mapping Agency is not obligated to consult or negotiate with a labor organization on that matter even if that provision of law or regulation is inapplicable to the National Imagery and Mapping Agency.

(b) BARGAINING UNITS.—The National Imagery and Mapping Agency shall accord exclusive recognition to a labor organization under section 7111 of title 5 only for a bargaining unit that was recognized as appropriate for the Defense Mapping Agency on the day before the date on which employees and positions of the Defense Mapping Agency in that bargaining unit became employees and positions of the National Imagery and Mapping Agency under

the National Imagery and Mapping Agency Act of 1996 (title XI of the National Defense Authorization Act for Fiscal Year 1997).

(c) TERMINATION OF BARGAINING UNIT COVERAGE OF POSITION MODIFIED TO AFFECT NATIONAL SECURITY DIRECTLY.—(1) If the Director of the National Imagery and Mapping Agency determines that the responsibilities of a position within a collective bargaining unit should be modified to include intelligence, counterintelligence, investigative, or security duties not previously assigned to that position and that the performance of the newly assigned duties directly affects the national security of the United States, then, upon such a modification of the responsibilities of that position, the position shall cease to be covered by the collective bargaining unit and the employee in that position shall cease to be entitled to representation by a labor organization accorded exclusive recognition for that collective bargaining unit.

(2) A determination described in paragraph (1) that is made by the Director of the National Imagery and Mapping Agency may not be reviewed by the Federal Labor Relations Authority or any court of the United States.

#### **§ 462. Financial assistance to certain employees in acquisition of critical skills**

The Secretary of Defense may establish an undergraduate training program with respect to civilian employees of the National Imagery and Mapping Agency that is similar in purpose, conditions, content, and administration to the program established by the Secretary of Defense under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

### SUBCHAPTER IV—DEFINITIONS

Sec.  
467. Definitions.

#### **§ 467. Definitions**

In this chapter:

(1) The term “function” means any duty, obligation, responsibility, privilege, activity, or program.

(2)(A) The term “imagery” means, except as provided in subparagraph (B), a likeness or presentation of any natural or manmade feature or related object or activity and the positional data acquired at the same time the likeness or representation was acquired, including—

(i) products produced by space-based national intelligence reconnaissance systems; and

(ii) likenesses or presentations produced by satellites, airborne platforms, unmanned aerial vehicles, or other similar means.

(B) Such term does not include handheld or clandestine photography taken by or on behalf of human intelligence collection organizations.

(3) The term “imagery intelligence” means the technical, geographic, and intelligence information derived through the interpretation or analysis of imagery and collateral materials.

(4) The term “geospatial information” means information that identifies the geographic location and characteristics of natural or constructed features and boundaries on the earth and includes—

(A) statistical data and information derived from, among other things, remote sensing, mapping, and surveying technologies; and

(B) mapping, charting, geodetic data, and related products.

## NATIONAL IMAGERY AND MAPPING AGENCY ACT OF 1996

(Public Law 104–201; 110 Stat. 2675; approved September 23, 1996)

\* \* \* \* \*

### TITLE XI—NATIONAL IMAGERY AND MAPPING AGENCY

- Sec. 1101. Short title.
- Sec. 1102. Findings.
- Sec. 1103. Role of Director of Central Intelligence in appointment and evaluation of certain intelligence officials.

#### Subtitle A—Establishment of Agency

- Sec. 1111. Establishment.
- Sec. 1112. Missions and authority.
- Sec. 1113. Transfers of personnel and assets.
- Sec. 1114. Compatibility with authority under the National Security Act of 1947.
- Sec. 1115. Creditable civilian service for career conditional employees of the Defense Mapping Agency.
- Sec. 1116. Saving provisions.
- Sec. 1117. Definitions.
- Sec. 1118. Authorization of appropriations.

#### Subtitle B—Conforming Amendments and Effective Dates

- Sec. 1121. Redesignation and repeals.
- Sec. 1122. Reference amendments.
- Sec. 1123. Headings and clerical amendments.
- Sec. 1124. Effective date.

#### SEC. 1101. SHORT TITLE.

This title may be cited as the “National Imagery and Mapping Agency Act of 1996”.

#### SEC. 1102. FINDINGS.

Congress makes the following findings:

(1) There is a need within the Department of Defense and the Intelligence Community of the United States to provide a single agency focus for the growing number and diverse types of customers for imagery and geospatial information resources within the Government, to ensure visibility and accountability for those resources, and to harness, leverage, and focus rapid technological developments to serve the imagery, imagery intelligence, and geospatial information customers.

(2) There is a need for a single Government agency to solicit and advocate the needs of that growing and diverse pool of customers.

(3) A single combat support agency dedicated to imagery, imagery intelligence, and geospatial information could act as a focal point for support of all imagery intelligence and

geospatial information customers, including customers in the Department of Defense, the Intelligence Community, and related agencies outside of the Department of Defense.

(4) Such an agency would best serve the needs of the imagery, imagery intelligence, and geospatial information customers if it were organized—

(A) to carry out its mission responsibilities under the authority, direction, and control of the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff; and

(B) to carry out its responsibilities to national intelligence customers in accordance with policies and priorities established by the Director of Central Intelligence.

\* \* \* \* \*

### Subtitle A—Establishment of Agency

**SEC. 1111. ESTABLISHMENT.**

(a) ESTABLISHMENT.—There is hereby established in the Department of Defense a Defense Agency to be known as the National Imagery and Mapping Agency.

(b) TRANSFER OF FUNCTIONS FROM DEPARTMENT OF DEFENSE ENTITIES.—The missions and functions of the following elements of the Department of Defense are transferred to the National Imagery and Mapping Agency:

- (1) The Defense Mapping Agency.
- (2) The Central Imagery Office.
- (3) Other elements of the Department of Defense as specified in the classified annex to this Act.

(c) TRANSFER OF FUNCTIONS FROM CENTRAL INTELLIGENCE AGENCY.—The missions and functions of the following elements of the Central Intelligence Agency are transferred to the National Imagery and Mapping Agency:

- (1) The National Photographic Interpretation Center.
- (2) Other elements of the Central Intelligence Agency as specified in the classified annex to this Act.

(d) PRESERVATION OF LEVEL AND QUALITY OF IMAGERY INTELLIGENCE SUPPORT TO ALL-SOURCE ANALYSIS AND PRODUCTION.—In managing the establishment of the National Imagery and Mapping Agency, the Secretary of Defense, in consultation with the Director of Central Intelligence, shall ensure that imagery intelligence support provided to all-source analysis and production is in no way degraded or compromised.

\* \* \* \* \*

**SEC. 1113. TRANSFERS OF PERSONNEL AND ASSETS.**

(a) PERSONNEL AND ASSETS.—Subject to subsections (b) and (c), the personnel, assets, unobligated balances of appropriations and authorizations of appropriations, and, to the extent jointly determined appropriate by the Secretary of Defense and Director of Central Intelligence, obligated balances of appropriations and authorizations of appropriations employed, used, held, arising from, or available in connection with the missions and functions transferred under section 1111(b) or section 1111(c) are transferred to the Na-

tional Imagery and Mapping Agency. Transfers of appropriations from the Central Intelligence Agency under this subsection shall be made in accordance with section 1531 of title 31, United States Code.

(b) DETERMINATION OF CIA POSITIONS TO BE TRANSFERRED.— Not earlier than two years after the effective date of this subtitle, the Secretary of Defense and the Director of Central Intelligence shall determine which, if any, positions and personnel of the Central Intelligence Agency are to be transferred to the National Imagery and Mapping Agency. The positions to be transferred, and the employees serving in such positions, shall be transferred to the National Imagery and Mapping Agency under terms and conditions prescribed by the Secretary of Defense and the Director of Central Intelligence.

(c) RULE FOR CIA IMAGERY ACTIVITIES ONLY PARTIALLY TRANSFERRED.—If the National Photographic Interpretation Center of the Central Intelligence Agency or any imagery-related activity of the Central Intelligence Agency authorized to be performed by the National Imagery and Mapping Agency is not completely transferred to the National Imagery and Mapping Agency, the Secretary of Defense and the Director of Central Intelligence shall—

(1) jointly determine which, if any, contracts, leases, property, and records employed, used, held, arising from, available to, or otherwise relating to such Center or activity is to be transferred to the National Imagery and Intelligence Agency; and

(2) provide by written agreement for the transfer of such items.

\* \* \* \* \*

**SEC. 1115. CREDITABLE CIVILIAN SERVICE FOR CAREER CONDITIONAL EMPLOYEES OF THE DEFENSE MAPPING AGENCY.**

In the case of an employee of the National Imagery and Mapping Agency who, on the day before the effective date of this title, was an employee of the Defense Mapping Agency in a career-conditional status, the continuous service of that employee as an employee of the National Imagery and Mapping Agency on and after such date shall be considered creditable service for the purpose of any determination of the career status of the employee.

**SEC. 1116. SAVING PROVISIONS.**

(a) CONTINUING EFFECT ON LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, international agreements, grants, contracts, leases, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in connection with any of the functions which are transferred under this title or any function that the National Imagery and Mapping Agency is authorized to perform by law, and

(2) which are in effect at the time this title takes effect, or were final before the effective date of this title and are to become effective on or after the effective date of this title, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law

by the President, the Secretary of Defense, the Director of the National Imagery and Mapping Agency or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—This title and the amendments made by this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an element of the Department of Defense or Central Intelligence Agency at the time this title takes effect, with respect to function of that element transferred by section 1122, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this section shall be deemed to prohibit 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 title had not been enacted.

**SEC. 1117. DEFINITIONS.**

In this subtitle, the terms “function”, “imagery”, “imagery intelligence”, and “geospatial information” have the meanings given those terms in section 467 of title 10, United States Code, as added by section 1112.

**SEC. 1118. AUTHORIZATION OF APPROPRIATIONS.**

Funds are authorized to be appropriated for the National Imagery and Mapping Agency for fiscal year 1997 in amounts and for purposes, and subject to the terms, conditions, limitations, restrictions, and requirements, that are set forth in the Classified Annex to this Act.

## **Subtitle B—Conforming Amendments and Effective Dates**

\* \* \* \* \*

**SEC. 1124. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect on October 1, 1996, or the date of the enactment of this Act, whichever is later.

**CHAPTERS 81 AND 83 OF TITLE 10, UNITED STATES  
CODE (DEFENSE INTELLIGENCE AGENCY CIVILIAN  
PERSONNEL)**

**CHAPTER 81—CIVILIAN EMPLOYEES**

\* \* \* \* \*

**§ 1592. Prohibition on payment of severance pay to foreign  
nationals in the event of certain overseas base clo-  
sures**

Funds available to the Department of Defense (including funds in the Foreign National Employees Separation Pay Account, Defense, established under section 1581 of this title) may not be used to pay severance pay to a foreign national employed by the Department of Defense under a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country.

\* \* \* \* \*

## CHAPTER 83—CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES

Subchapter	Sec.
I. Defense-Wide Intelligence Personnel Policy .....	1601
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### SUBCHAPTER I—DEFENSE-WIDE INTELLIGENCE PERSONNEL POLICY

Sec.
1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay.
1602. Basic pay.
1603. Additional compensation, incentives, and allowances.
[1604. Repealed.]
1605. Benefits for certain employees assigned outside the United States.
1606. Defense Intelligence Senior Executive Service.
1607. Intelligence Senior Level positions.
1608. Time-limited appointments.
1609. Termination of defense intelligence employees.
1610. Reductions and other adjustments in force.
1611. Postemployment assistance: certain terminated intelligence employees.
1612. Merit system principles and civil service protections: applicability.
1613. Miscellaneous provisions.
1614. Definitions.

#### **§ 1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay**

(a) GENERAL AUTHORITY.—The Secretary of Defense may—

(1) establish, as positions in the excepted service, such defense intelligence positions in the Department of Defense as the Secretary determines necessary to carry out the intelligence functions of the Department, including—

(A) Intelligence Senior Level positions designated under section 1607 of this title; and

(B) positions in the Defense Intelligence Senior Executive Service;

(2) appoint individuals to those positions (after taking into consideration the availability of preference eligibles for appointment to those positions); and

(3) fix the compensation of such individuals for service in those positions.

(b) CONSTRUCTION WITH OTHER LAWS.—The authority of the Secretary of Defense under subsection (a) applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

#### **§ 1602. Basic pay**

(a) AUTHORITY TO FIX RATES OF BASIC PAY.—The Secretary of Defense (subject to the provisions of this section) shall fix the rates

of basic pay for positions established under section 1601 of this title in relation to the rates of basic pay provided in subpart D of part III of title 5 for positions subject to that subpart which have corresponding levels of duties and responsibilities.

(b) **MAXIMUM RATES.**—A rate of basic pay fixed under subsection (a) for a position established under section 1601 of this title may not (except as otherwise provided by law) exceed—

(1) in the case of a Defense Intelligence Senior Executive Service position, the maximum rate provided in section 5382 of title 5;

(2) in the case of an Intelligence Senior Level position, the maximum rate provided in section 5382 of title 5; and

(3) in the case of any other position, the maximum rate provided in section 5306(e) of title 5.

(c) **PREVAILING RATE SYSTEMS.**—The Secretary of Defense may, consistent with section 5341 of title 5, adopt such provisions of that title as provide for prevailing rate systems of basic pay and may apply those provisions to positions for civilian employees in or under which the Department of Defense may employ individuals described by section 5342(a)(2)(A) of that title.

### **§ 1603. Additional compensation, incentives, and allowances**

(a) **ADDITIONAL COMPENSATION BASED ON TITLE 5 AUTHORITIES.**—The Secretary of Defense may provide employees in defense intelligence positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(b) **ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT.**—

(1) In addition to basic pay, employees in defense intelligence positions who are citizens or nationals of the United States and are stationed outside the continental United States or in Alaska may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, while they are so stationed.

(2) An allowance under this subsection shall be based on—

(A) living costs substantially higher than in the District of Columbia;

(B) conditions of environment which (i) differ substantially from conditions of environment in the continental United States, and (ii) warrant an allowance as a recruitment incentive; or

(C) both of the factors specified in subparagraphs (A) and (B).

(3) An allowance under this subsection may not exceed the allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

**[§ 1604. Repealed. P.L. 104-201, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2745]**

**§ 1605. Benefits for certain employees assigned outside the United States<sup>1</sup>**

(a)(1) The Secretary of Defense may provide to civilian personnel described in subsection (d) allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (5), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081 (2), (3), (4), (5), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

(2) The Secretary may also provide to any such civilian personnel special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2153) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).

(b) The authority of the Secretary of Defense to make payments under subsection (a) is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(c) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) Subsection (a) applies to civilian personnel of the Department of Defense who—

(1) are United States nationals;

(2) in the case of employees of the Defense Intelligence Agency, are assigned to duty outside the United States and, in the case of other employees, are assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; and

(3) are designated by the Secretary of Defense for the purposes of subsection (a).

**§ 1606. Defense Intelligence Senior Executive Service**

(a) ESTABLISHMENT.—The Secretary of Defense may establish a Defense Intelligence Senior Executive Service for defense intelligence positions established pursuant to section 1601(a) of this title that are equivalent to Senior Executive Service positions. The number of positions in the Defense Intelligence Senior Executive Service may not exceed 544.

(b) REGULATIONS CONSISTENT WITH TITLE 5 PROVISIONS.—The Secretary of Defense shall prescribe regulations for the Defense Intelligence Senior Executive Service which are consistent with the requirements set forth in sections 3131, 3132(a)(2), 3396(c), 3592,

<sup>1</sup>Section 431 of title 37, United States Code, provides similar benefits for members of the Armed Forces assigned to the Defense Intelligence Agency.

3595(a), 5384, and 6304 of title 5, subsections (a), (b), and (c) of section 7543 of such title (except that any hearing or appeal to which a member of the Defense Intelligence Senior Executive Service is entitled shall be held or decided pursuant to those regulations), and subchapter II of chapter 43 of such title. To the extent that the Secretary determines it practicable to apply to members of, or applicants for, the Defense Intelligence Senior Executive Service other provisions of title 5 that apply to members of, or applicants for, the Senior Executive Service, the Secretary shall also prescribe regulations to implement those provisions with respect to the Defense Intelligence Senior Executive Service.

(c) AWARD OF RANK TO MEMBERS OF THE DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507 of title 5 to members of the Defense Intelligence Senior Executive Service. The award of such rank shall be made in a manner consistent with the provisions of that section.

#### **§ 1607. Intelligence Senior Level positions**

(a) DESIGNATION OF POSITIONS.—The Secretary of Defense may designate as an Intelligence Senior Level position any defense intelligence position that, as determined by the Secretary—

(1) is classifiable above grade GS-15 of the General Schedule;

(2) does not satisfy functional or program management criteria for being designated a Defense Intelligence Senior Executive Service position; and

(3) has no more than minimal supervisory responsibilities.

(b) REGULATIONS.—Subsection (a) shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

(c) AWARD OF RANK TO EMPLOYEES IN INTELLIGENCE SENIOR LEVEL POSITIONS.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507a of title 5 to employees in Intelligence Senior Level positions designated under subsection (a). The award of such rank shall be made in a manner consistent with the provisions of that section.

#### **§ 1608. Time-limited appointments**

(a) AUTHORITY FOR TIME-LIMITED APPOINTMENTS.—The Secretary of Defense may by regulation authorize appointing officials to make time-limited appointments to defense intelligence positions specified in the regulations.

(b) REVIEW OF USE OF AUTHORITY.—The Secretary of Defense shall review each time-limited appointment in a defense intelligence position at the end of the first year of the period of the appointment and determine whether the appointment should be continued for the remainder of the period. The continuation of a time-limited appointment after the first year shall be subject to the approval of the Secretary.

(c) CONDITION ON PERMANENT APPOINTMENT TO DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—An employee serving in a defense intelligence position pursuant to a time-limited appointment is not eligible for a permanent appointment to a Defense Intelligence Senior Executive Service position (including a position in

which the employee is serving) unless the employee is selected for the permanent appointment on a competitive basis.

(d) **TIME-LIMITED APPOINTMENT DEFINED.**—In this section, the term “time-limited appointment” means an appointment (subject to the condition in subsection (b)) for a period not to exceed two years.

### **§ 1609. Termination of defense intelligence employees**

(a) **TERMINATION AUTHORITY.**—Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any employee in a defense intelligence position if the Secretary—

(1) considers that action to be in the interests of the United States; and

(2) determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such employee cannot be invoked in a manner consistent with the national security.

(b) **FINALITY.**—A decision by the Secretary of Defense to terminate the employment of an employee under this section is final and may not be appealed or reviewed outside the Department of Defense.

(c) **NOTIFICATION TO CONGRESSIONAL COMMITTEES.**—Whenever the Secretary of Defense terminates the employment of an employee under the authority of this section, the Secretary shall promptly notify the congressional oversight committees of such termination.

(d) **PRESERVATION OF RIGHT TO SEEK OTHER EMPLOYMENT.**—Any termination of employment under this section does not affect the right of the employee involved to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

(e) **LIMITATION ON DELEGATION.**—The authority of the Secretary of Defense under this section may be delegated only to the Deputy Secretary of Defense, the head of an intelligence component of the Department of Defense (with respect to employees of that component), or the Secretary of a military department (with respect to employees of that department). An action to terminate employment of such an employee by any such official may be appealed to the Secretary of Defense.

### **§ 1610. Reductions and other adjustments in force**

(a) **IN GENERAL.**—The Secretary of Defense shall prescribe regulations for the separation of employees in defense intelligence positions, including members of the Defense Intelligence Senior Executive Service and employees in Intelligence Senior Level positions, during a reduction in force or other adjustment in force. The regulations shall apply to such a reduction in force or other adjustment in force notwithstanding sections 3501(b) and 3502 of title 5.

(b) **MATTERS TO BE GIVEN EFFECT.**—The regulations shall give effect to the following:

(1) Tenure of employment.

(2) Military preference, subject to sections 3501(a)(3) and 3502(b) of title 5.

(3) The veteran's preference under section 3502(b) of title 5.

(4) Performance.

(5) Length of service computed in accordance with the second sentence of section 3502(a) of title 5.

(c) REGULATIONS RELATING TO DEFENSE INTELLIGENCE SES.—The regulations relating to removal from the Defense Intelligence Senior Executive Service in a reduction in force or other adjustment in force shall be consistent with section 3595(a) of title 5.

(d) RIGHT OF APPEAL.—(1) The regulations shall provide a right of appeal regarding a personnel action under the regulations. The appeal shall be determined within the Department of Defense. An appeal determined at the highest level provided in the regulations shall be final and not subject to review outside the Department of Defense. A personnel action covered by the regulations is not subject to any other provision of law that provides appellate rights or procedures.

(2) Notwithstanding paragraph (1), a preference eligible referred to in section 7511(a)(1)(B) of title 5 may elect to have an appeal of a personnel action taken against the preference eligible under the regulation determined by the Merit Systems Protection Board instead of having the appeal determined within the Department of Defense. Section 7701 of title 5 shall apply to any such appeal to the Merit Systems Protection Board.

(e) CONSULTATION WITH OPM.—Regulations under this section shall be prescribed in consultation with the Director of the Office of Personnel Management.

### **§ 1611. Postemployment assistance: certain terminated intelligence employees**

(a) AUTHORITY.—Subject to subsection (c), the Secretary of Defense may, in the case of any individual who is a qualified former intelligence employee, use appropriated funds—

(1) to assist that individual in finding and qualifying for employment other than in a defense intelligence position;

(2) to assist that individual in meeting the expenses of treatment of medical or psychological disabilities of that individual; and

(3) to provide financial support to that individual during periods of unemployment.

(b) QUALIFIED FORMER INTELLIGENCE EMPLOYEES.—For purposes of this section, a qualified former intelligence employee is an individual who was employed as a civilian employee of the Department of Defense in a sensitive defense intelligence position—

(1) who has been found to be ineligible for continued access to information designated as “Sensitive Compartmented Information” and employment in a defense intelligence position; or

(2) whose employment in a defense intelligence position has been terminated.

(c) CONDITIONS.—Assistance may be provided to a qualified former intelligence employee under subsection (a) only if the Secretary determines that such assistance is essential to—

(1) maintain the judgment and emotional stability of the qualified former intelligence employee; and

(2) avoid circumstances that might lead to the unlawful disclosure of classified information to which the qualified former intelligence employee had access.

(d) DURATION OF ASSISTANCE.—Assistance may not be provided under this section in the case of any individual after the end of the five-year period beginning on the date of the termination of the employment of the individual in a defense intelligence position.

(e) ANNUAL REPORT.—(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (3) an annual report with respect to any expenditure made under this section.

(2) In the case of a report required to be submitted under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, the date for the submittal of such report shall be as provided in section 507 of the National Security Act of 1947.

(3) The committees referred to in paragraph (1) are the following:

(A) The Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(B) The Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.

**§ 1612. Merit system principles and civil service protections: applicability**

(a) APPLICABILITY OF MERIT SYSTEM PRINCIPLES.—Section 2301 of title 5 shall apply to the exercise of authority under this subchapter (other than sections 1605 and 1611).

(b) CIVIL SERVICE PROTECTIONS.—(1) If, in the case of a position established under authority other than section 1601(a)(1) of this title that is reestablished as an excepted service position under that section, the provisions of law referred to in paragraph (2) applied to the person serving in that position immediately before the position is so reestablished and such provisions of law would not otherwise apply to the person while serving in the position as so reestablished, then such provisions of law shall, subject to paragraph (3), continue to apply to the person with respect to service in that position for as long as the person continues to serve in the position without a break in service.

(2) The provisions of law referred to in paragraph (1) are the following provisions of title 5:

(A) Section 2302, relating to prohibited personnel practices.

(B) Chapter 75, relating to adverse actions.

(3)(A) Notwithstanding any provision of chapter 75 of title 5, an appeal of an adverse action by an individual employee covered by paragraph (1) shall be determined within the Department of Defense if the employee so elects.

(B) The Secretary of Defense shall prescribe the procedures for initiating and determining appeals of adverse actions pursuant to elections made under subparagraph (A).

### § 1613. Miscellaneous provisions

(a) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in sections 1601 through 1603 and 1606 through 1610 may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an agency or office that is a successor to an agency or office covered by the agreement before the succession.

(b) NOTICE TO CONGRESS OF REGULATIONS.—The Secretary of Defense shall notify Congress of any regulations prescribed to carry out this subchapter (other than sections 1605 and 1611). Such notice shall be provided by submitting a copy of the regulations to the congressional oversight committees not less than 60 days before such regulations take effect.

### § 1614. Definitions

In this subchapter:

(1) The term “defense intelligence position” means a civilian position as an intelligence officer or intelligence employee of the Department of Defense.

(2) The term “intelligence component of the Department of Defense” means any of the following:

(A) The National Security Agency.

(B) The Defense Intelligence Agency.

(C) The National Imagery and Mapping Agency.

(D) Any other component of the Department of Defense that performs intelligence functions and is designated by the Secretary of Defense as an intelligence component of the Department of Defense.

(E) Any successor to a component specified in, or designated pursuant to, this paragraph.

(3) The term “congressional oversight committees” means—

(A) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(4) The term “excepted service” has the meaning given such term in section 2103 of title 5.

(5) The term “preference eligible” has the meaning given such term in section 2108(3) of title 5.

(6) The term “Senior Executive Service position” has the meaning given such term in section 3132(a)(2) of title 5.

(7) The term “collective bargaining agreement” has the meaning given such term in section 7103(8) of title 5.

## SUBCHAPTER II—DEFENSE INTELLIGENCE AGENCY PERSONNEL

Sec.  
1621. Defense Intelligence Agency merit pay system.

1622. Uniform allowance: civilian employees.

1623. Financial assistance to certain employees in acquisition of critical skills.

### **§ 1621. Defense Intelligence Agency merit pay system**

The Secretary of Defense may by regulation establish a merit pay system for such employees of the Defense Intelligence Agency as the Secretary considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401 of title 5, as in effect on October 31, 1993.

### **§ 1622. Uniform allowance: civilian employees**

(a) The Secretary of Defense may pay an allowance under this section to any civilian employee of the Defense Intelligence Agency who—

(1) is assigned to a Defense Attaché Office outside the United States; and

(2) is required by regulation to wear a prescribed uniform in performance of official duties.

(b) Notwithstanding section 5901(a) of title 5, the amount of any such allowance shall be the greater of the following:

(1) The amount provided for employees of the Department of State assigned to positions outside the United States and required by regulation to wear a prescribed uniform in performance of official duties.

(2) The maximum allowance provided under section 1593(b) of this title.

(c) An allowance paid under this section shall be treated in the same manner as is provided in subsection (c) of section 5901 of title 5 for an allowance paid under that section.

### **§ 1623. Financial assistance to certain employees in acquisition of critical skills**

(a) The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees of the Defense Intelligence Agency that is similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

(b) Any payments made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

**DAVID L. BOREN NATIONAL SECURITY EDUCATION ACT  
OF 1991**

(Public Law 102-183; 105 Stat. 1271; approved December 4, 1991)

**TITLE VIII—NATIONAL SECURITY SCHOLARSHIPS,  
FELLOWSHIPS, AND GRANTS**

**SEC. 801. [50 U.S.C. 1901] SHORT TITLE, FINDINGS, AND PURPOSES.**

(a) **SHORT TITLE.**—This title may be cited as the “David L. Boren National Security Education Act of 1991”.

(b) **FINDINGS.**—The Congress makes the following findings:

(1) The security of the United States is and will continue to depend on the ability of the United States to exercise international leadership.

(2) The ability of the United States to exercise international leadership is, and will increasingly continue to be, based on the political and economic strength of the United States, as well as on United States military strength around the world.

(3) Recent changes in the world pose threats of a new kind to international stability as Cold War tensions continue to decline while economic competition, regional conflicts, terrorist activities, and weapon proliferations have dramatically increased.

(4) The future national security and economic well-being of the United States will depend substantially on the ability of its citizens to communicate and compete by knowing the languages and cultures of other countries.

(5) The Federal Government has an interest in ensuring that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of this changing international environment.

(6) The Federal Government also has an interest in taking actions to alleviate the problem of American undergraduate and graduate students being inadequately prepared to meet the challenges posed by increasing global interaction among nations.

(7) American colleges and universities must place a new emphasis on improving the teaching of foreign languages, area studies, counterproliferation studies, and other international fields to help meet those challenges.

(c) **PURPOSES.**—The purposes of this title are as follows:

(1) To provide the necessary resources, accountability, and flexibility to meet the national security education needs of the United States, especially as such needs change over time.

(2) To increase the quantity, diversity, and quality of the teaching and learning of subjects in the fields of foreign lan-

guages, area studies, counterproliferation studies, and other international fields that are critical to the Nation's interest.

(3) To produce an increased pool of applicants for work in the departments and agencies of the United States Government with national security responsibilities.

(4) To expand, in conjunction with other Federal programs, the international experience, knowledge base, and perspectives on which the United States citizenry, Government employees, and leaders rely.

(5) To permit the Federal Government to advocate the cause of international education.

**SEC. 802. [50 U.S.C. 1902] SCHOLARSHIP, FELLOWSHIP, AND GRANT PROGRAM.**

(a) PROGRAM REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall carry out a program for—

(A) awarding scholarships to undergraduate students who—

(i) are United States citizens in order to enable such students to study, for at least one academic semester or equivalent term, in foreign countries that are critical countries (as determined under section 803(d)(4)(A)) in those languages and study areas where deficiencies exist (as identified in the assessments undertaken pursuant to section 806(d)); and

(ii) pursuant to subsection (b)(2)(A), enter into an agreement to work in a national security position or work in the field of higher education in the area of study for which the scholarship was awarded;

(B) awarding fellowships to graduate students who—

(i) are United States citizens to enable such students to pursue education as part of a graduate degree program of a United States institution of higher education in the disciplines of foreign languages, area studies, counterproliferation studies, and other international fields relating to the national security interests of the United States that are critical areas of those disciplines (as determined under section 803(d)(4)(B)) and in which deficiencies exist (as identified in the assessments undertaken pursuant to section 806(d)); and

(ii) pursuant to subsection (b)(2)(B), enter into an agreement to work in a national security position or work in the field of education in the area of study for which the fellowship was awarded;

(C) awarding grants to institutions of higher education to enable such institutions to establish, operate, or improve programs in foreign languages, area studies, counterproliferation studies, and other international fields that are critical areas of those disciplines (as determined under section 803(d)(4)(C)); and

(D) awarding grants to institutions of higher education to carry out activities under the National Flagship Language Initiative (described in subsection (i)).

(2) FUNDING ALLOCATIONS.—Of the amount available for obligation out of the National Security Education Trust Fund for any fiscal year for the purposes stated in paragraph (1), the Secretary shall have a goal of allocating—

(A)  $\frac{1}{3}$  of such amount for the awarding of scholarships pursuant to paragraph (1)(A);

(B)  $\frac{1}{3}$  of such amount for the awarding of fellowships pursuant to paragraph (1)(B); and

(C)  $\frac{1}{3}$  of such amount for the awarding of grants pursuant to paragraph (1)(C).

The funding allocation under this paragraph shall not apply to grants under paragraph (1)(D) for the National Flagship Language Initiative described in subsection (i). For the authorization of appropriations for the National Flagship Language Initiative, see section 811.

(3) CONSULTATION WITH NATIONAL SECURITY EDUCATION BOARD.—The program required under this title shall be carried out in consultation with the National Security Education Board established under section 803.

(4) CONTRACT AUTHORITY.—The Secretary may enter into one or more contracts, with private national organizations having an expertise in foreign languages, area studies, counterproliferation studies, and other international fields, for the awarding of the scholarships, fellowships, and grants described in paragraph (1) in accordance with the provisions of this title. The Secretary may enter into such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provision of law that requires the use of competitive procedures. In addition, the Secretary may enter into personal service contracts for periods up to one year for program administration, except that not more than 10 such contracts may be in effect at any one time.

(b) SERVICE AGREEMENT.—In awarding a scholarship or fellowship under the program, the Secretary or contract organization referred to in subsection (a)(4), as the case may be, shall require a recipient of any fellowship, or any scholarship to enter into an agreement that, in return for such assistance, the recipient—

(1) will maintain satisfactory academic progress, as determined in accordance with regulations issued by the Secretary, and agrees that failure to maintain such progress shall constitute grounds upon which the Secretary or contract organization referred to in subsection (a)(4) may terminate such assistance;

(2) will—

(A) not later than eight years after such recipient's completion of the study for which scholarship assistance was provided under the program, and in accordance with regulations issued by the Secretary—

(i) work in a national security position for a period specified by the Secretary, which period shall be no longer than the period for which scholarship assistance was provided; or

(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal

Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or

(B) upon completion of such recipient's education under the program, and in accordance with such regulations—

(i) work in a national security position for a period specified by the Secretary, which period shall be not less than one and not more than three times the period for which the fellowship assistance was provided; or

(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); and

(3) if the recipient fails to meet either of the obligations set forth in paragraph (1) or (2), will reimburse the United States Government for the amount of the assistance provided the recipient under the program, together with interest at a rate determined in accordance with regulations issued by the Secretary.

(c) EVALUATION OF PROGRESS IN LANGUAGE SKILLS.—The Secretary shall, through the National Security Education Program office, administer a test of the foreign language skills of each recipient of a scholarship or fellowship under this title before the commencement of the study or education for which the scholarship or fellowship is awarded and after the completion of such study or education. The purpose of these tests is to evaluate the progress made by recipients of scholarships and fellowships in developing foreign language skills as a result of assistance under this title.

(d) DISTRIBUTION OF ASSISTANCE.—In selecting the recipients for awards of scholarships, fellowships, or grants pursuant to this title, the Secretary or a contract organization referred to in subsection (a)(4), as the case may be, shall take into consideration (1) the extent to which the selections will result in there being an equitable geographic distribution of such scholarships, fellowships, or grants (as the case may be) among the various regions of the United States, and (2) the extent to which the distribution of scholarships and fellowships to individuals reflects the cultural, racial, and ethnic diversity of the population of the United States.

(e) MERIT REVIEW.—The Secretary shall award scholarships, fellowships, and grants under the program based upon a merit review process.

(f) **LIMITATION ON USE OF PROGRAM PARTICIPANTS.**—No person who receives a grant, scholarship, or fellowship or any other type of assistance under this title shall, as a condition of receiving such assistance or under any other circumstances, be used by any department, agency, or entity of the United States Government engaged in intelligence activities to undertake any activity on its behalf during the period such person is pursuing a program of education for which funds are provided under the program carried out under this title.

(g) **DETERMINATION OF AGENCIES AND OFFICES OF THE FEDERAL GOVERNMENT HAVING NATIONAL SECURITY RESPONSIBILITIES.**—(1) The Secretary, in consultation with the Board, shall annually determine and develop a list identifying each agency or office of the Federal Government having national security responsibilities at which a recipient of a fellowship or scholarship under this title will be able to make the recipient's foreign area and language skills available to such agency or office. The Secretary shall submit the first such list to the Congress and include each subsequent list in the annual report to the Congress, as required by section 806(b)(6).

(2) Notwithstanding section 804, funds may not be made available from the Fund to carry out this title for fiscal year 1997 until 30 days after the date on which the Secretary of Defense submits to the Congress the first such list required by paragraph (1).

(h) **USE OF AWARDS TO ATTEND THE FOREIGN LANGUAGE CENTER OF THE DEFENSE LANGUAGE INSTITUTE.**—(1) The Secretary shall provide for the admission of award recipients to the Foreign Language Center of the Defense Language Institute (hereinafter in this subsection referred to as the "Center"). An award recipient may apply a portion of the applicable scholarship or fellowship award for instruction at the Center on a space-available basis as a Department of Defense sponsored program to defray the additive instructional costs.

(2) Except as the Secretary determines necessary, an award recipient who receives instruction at the Center shall be subject to the same regulations with respect to attendance, discipline, discharge, and dismissal as apply to other persons attending the Center.

(3) In this subsection, the term "award recipient" means an undergraduate student who has been awarded a scholarship under subsection (a)(1)(A) or a graduate student who has been awarded a fellowship under subsection (a)(1)(B) who—

(A) is in good standing;

(B) has completed all academic study in a foreign country, as provided for under the scholarship or fellowship; and

(C) would benefit from instruction provided at the Center.

(i) **NATIONAL FLAGSHIP LANGUAGE INITIATIVE.**—(1) Under the National Flagship Language Initiative, institutions of higher education shall establish, operate, or improve activities designed to train students in programs in a range of disciplines to achieve advanced levels of proficiency in those foreign languages that the Secretary identifies as being the most critical in the interests of the national security of the United States.

(2) An undergraduate student who has been awarded a scholarship under subsection (a)(1)(A) or a graduate student who has been awarded a fellowship under subsection (a)(1)(B) may partici-

pate in the activities carried out under the National Flagship Language Initiative.

(3) An institution of higher education that receives a grant pursuant to subsection (a)(1)(D) shall give special consideration to applicants who are employees of the Federal Government.

(4) For purposes of this subsection, the Foreign Language Center of the Defense Language Institute and any other educational institution that provides training in foreign languages operated by the Department of Defense or an agency in the intelligence community is deemed to be an institution of higher education, and may carry out the types of activities permitted under the National Flagship Language Initiative.

**SEC. 803. [50 U.S.C. 1903] NATIONAL SECURITY EDUCATION BOARD.**

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a National Security Education Board.

(b) COMPOSITION.—The Board shall be composed of the following individuals or the representatives of such individuals:

(1) The Secretary of Defense, who shall serve as the chairman of the Board.

(2) The Secretary of Education.

(3) The Secretary of State.

(4) The Secretary of Commerce.

(5) The Director of Central Intelligence.

(6) The Secretary of Energy.

(7) The Chairperson of the National Endowment for the Humanities.

(8) Six individuals appointed by the President, by and with the advice and consent of the Senate, who shall be experts in the fields of international, language, area, and counterproliferation studies education and who may not be officers or employees of the Federal Government.

(c) TERM OF APPOINTEES.—Each individual appointed to the Board pursuant to subsection (b)(7) shall be appointed for a period specified by the President at the time of the appointment, but not to exceed four years. Such individuals shall receive no compensation for service on the Board but may receive reimbursement for travel and other necessary expenses.

(d) FUNCTIONS.—The Board shall perform the following functions:

(1) Develop criteria for awarding scholarships, fellowships, and grants under this title, including an order of priority in such awards that favors individuals expressing an interest in national security issues or pursuing a career in a national security position.

(2) Provide for wide dissemination of information regarding the activities assisted under this title.

(3) Establish qualifications for students desiring scholarships or fellowships, and institutions of higher education desiring grants, under this title, including, in the case of students desiring a scholarship or fellowship, a requirement that the student have a demonstrated commitment to the study of the discipline for which the scholarship or fellowship is to be awarded.

(4) After taking into account the annual analyses of trends in language, international, area, and counterproliferation studies under section 806(b)(1), make recommendations to the Secretary regarding—

(A) which countries are not emphasized in other United States study abroad programs, such as countries in which few United States students are studying and countries which are of importance to the national security interests of the United States, and are, therefore, critical countries for the purposes of section 802(a)(1)(A);

(B) which areas within the disciplines described in section 802(a)(1)(B) relating to the national security interests of the United States are areas of study in which United States students are deficient in learning and are, therefore, critical areas within those disciplines for the purposes of that section;

(C) which areas within the disciplines described in section 802(a)(1)(C) are areas in which United States students, educators, and Government employees are deficient in learning and in which insubstantial numbers of United States institutions of higher education provide training and are, therefore, critical areas within those disciplines for the purposes of that section;

(D) how students desiring scholarships or fellowships can be encouraged to work for an agency or office of the Federal Government involved in national security affairs or national security policy upon completion of their education; and

(E) which foreign languages are critical to the national security interests of the United States for purposes of section 802(a)(1)(D) (relating to grants for the National Flagship Language Initiative).

(5) Encourage applications for fellowships under this title from graduate students having an educational background in any academic discipline, particularly in the areas of science or technology.

(6) Provide the Secretary biennially with a list of scholarship recipients and fellowship recipients, including an assessment of their foreign area and language skills, who are available to work in a national security position.

(7) Not later than 30 days after a scholarship or fellowship recipient completes the study or education for which assistance was provided under the program, provide the Secretary with a report fully describing the foreign area and language skills obtained by the recipient as a result of the assistance.

(8) Review the administration of the program required under this title.

**SEC. 804. [50 U.S.C. 1904] NATIONAL SECURITY EDUCATION TRUST FUND.**

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a trust fund to be known as the “National Security Education Trust Fund”. The assets of the Fund consist of amounts appropriated to the Fund and amounts credited to the Fund under subsection (e).

(b) AVAILABILITY OF SUMS IN THE FUND.—Sums in the Fund shall, to the extent provided in appropriations Acts, be available—

(1) for awarding scholarships, fellowships, and grants in accordance with the provisions of this title; and

(2) for properly allocable costs of the Federal Government for the administration of the program under this title.

(c) INVESTMENT OF FUND ASSETS.—The Secretary of the Treasury shall invest in full the amount in the Fund that is not immediately necessary for expenditure. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired on original issue at the issue price or by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of  $\frac{1}{8}$  of 1 percent, the rate of interest of such special obligations shall be the multiple of  $\frac{1}{8}$  of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchases of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue or at the market price, is not in the public interest.

(d) AUTHORITY TO SELL OBLIGATIONS.—Any obligation acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(e) AMOUNTS CREDITED TO FUND.—(1) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(2) Any amount paid to the United States under section 802(b)(3) shall be credited to and form a part of the Fund.

(3) Any gifts of money shall be credited to and form a part of the Fund.

**SEC. 805. [50 U.S.C. 1905] REGULATIONS AND ADMINISTRATIVE PROVISIONS**

(a) REGULATIONS.—The Secretary may prescribe regulations to carry out the program required by this title. Before prescribing any such regulations, the Secretary shall submit a copy of the proposed regulations to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives. Such proposed regulations may not take effect until 30 days after the date on which they are submitted to those committees.

(b) ACCEPTANCE AND USE OF GIFTS.—In order to conduct the program required by this title, the Secretary may—

(1) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purpose of conducting the program required by this title; and

(2) may use, sell, or otherwise dispose of such property for that purpose.

(c) VOLUNTARY SERVICES.—In order to conduct the program required by this title, the Secretary may accept and use the services of voluntary and noncompensated personnel.

(d) NECESSARY EXPENDITURES.—Expenditures necessary to conduct the program required by this title shall be paid from the Fund, subject to section 804(b).

**SEC. 806. [50 U.S.C. 1906] ANNUAL REPORT.**

(a) ANNUAL REPORT.—(1) The Secretary shall submit to the President and to the congressional intelligence committees an annual report of the conduct of the program required by this title.

(2) The report submitted to the President shall be submitted each year at the time that the President's budget for the next fiscal year is submitted to Congress pursuant to section 1105 of title 31, United States Code.

(3) The report submitted to the congressional intelligence committees shall be submitted on the date provided in section 507 of the National Security Act of 1947.

(b) CONTENTS OF REPORT.—Each such report shall contain—

(1) an analysis of the trends within language, international, area, and counterproliferation studies, along with a survey of such areas as the Secretary determines are receiving inadequate attention;

(2) the effect on those trends of activities under the program required by this title;

(3) an analysis of the assistance provided under the program for the previous fiscal year, to include the subject areas being addressed and the nature of the assistance provided;

(4) an analysis of the performance of the individuals who received assistance under the program during the previous fiscal year, to include the degree to which assistance was terminated under the program and the extent to which individual recipients failed to meet their obligations under the program;

(5) an analysis of the results of the program for the previous fiscal year, and cumulatively, to include, at a minimum—

(A) the percentage of individuals who have received assistance under the program who subsequently became employees of the United States Government;

(B) in the case of individuals who did not subsequently become employees of the United States Government, an analysis of the reasons why they did not become employees and an explanation as to what use, if any, was made of the assistance by those recipients; and

(C) the uses made of grants to educational institutions;

(6) the current list of agencies and offices of the Federal Government required to be developed by section 802(g); and

(7) any legislative changes recommended by the Secretary to facilitate the administration of the program or otherwise to enhance its objectives.

(c) SUBMISSION OF INITIAL REPORT.—The first report under this section shall be submitted at the time the budget for fiscal year 1994 is submitted to Congress.

(d) CONSULTATION.—During the preparation of each report required by subsection (a), the Secretary shall consult with the members of the Board specified in paragraphs (1) through (7) of section 803(b). Each such member shall submit to the Secretary an assessment of their hiring needs in the areas of language and area studies and a projection of the deficiencies in such areas. The Secretary shall include all assessments in the report required by subsection (a).

**SEC. 807. [50 U.S.C. 1907] GENERAL ACCOUNTING OFFICE AUDITS.**

The conduct of the program required by this title may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. Representatives of the General Accounting Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property of the Department of Defense pertaining to such activities and necessary to facilitate the audit.

**SEC. 808. [50 U.S.C. 1908] DEFINITIONS.**

For the purpose of this title:

(1) The term “Board” means the National Security Education Board established pursuant to section 803.

(2) The term “Fund” means the National Security Education Trust Fund established pursuant to section 804.

(3) The term “institution of higher education” has the meaning given that term by section 101 of the Higher Education Act of 1965.

(4) The term “national security position” means a position—

(A) having national security responsibilities in an agency or office of the Federal Government that has national security responsibilities, as determined under section 802(g); and

(B) in which the individual in such position makes their foreign language skills available to such agency or office.

(5) The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 809. [50 U.S.C. 1909] FISCAL YEAR 1992 FUNDING.**

(a) AUTHORIZATION OF APPROPRIATIONS TO THE FUND.—There is hereby authorized to be appropriated to the Fund for fiscal year 1992 the sum of \$150,000,000.

(b) AUTHORIZATION OF OBLIGATIONS FROM THE FUND.—During fiscal year 1992, there may be obligated from the Fund such amounts as may be provided in appropriations Acts, not to exceed

\$35,000,000. Amounts made available for obligation from the Fund for fiscal year 1992 shall remain available until expended.

**SEC. 810. [50 U.S.C. 1910] FUNDING.**

(a) FISCAL YEARS 1993 AND 1994.—Amounts appropriated to carry out this title for fiscal years 1993 and 1994 shall remain available until expended.

(b) FISCAL YEARS 1995 AND 1996.—There is authorized to be appropriated from, and may be obligated from, the Fund for each of the fiscal years 1995 and 1996 not more than the amount credited to the Fund in interest only for the preceding fiscal year under section 804(e).

**SEC. 811. [50 U.S.C. 1911] ADDITIONAL ANNUAL AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, there is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2003, \$10,000,000, to carry out the grant program for the National Flagship Language Initiative under section 802(a)(1)(D).

(b) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) shall remain available until expended.



## D. HOMELAND SECURITY INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

### TITLE II OF THE HOMELAND SECURITY ACT OF 2002

(Public Law 107–296; 116 Stat. 2135; approved November 25, 2002)

AN ACT To establish the Department of Homeland Security, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Homeland Security Act of 2002”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

\* \* \* \* \*

#### TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

##### Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.  
Sec. 202. Access to information.

##### Subtitle B—Critical Infrastructure Information

Sec. 211. Short title.  
Sec. 212. Definitions.  
Sec. 213. Designation of critical infrastructure protection program.  
Sec. 214. Protection of voluntarily shared critical infrastructure information.  
Sec. 215. No private right of action.

##### Subtitle C—Information Security

Sec. 221. Procedures for sharing information.  
Sec. 222. Privacy Officer.  
Sec. 223. Enhancement of non-Federal cybersecurity.  
Sec. 224. Net guard.  
Sec. 225. Cyber Security Enhancement Act of 2002.

##### Subtitle D—Office of Science and Technology

Sec. 231. Establishment of office; Director.  
Sec. 232. Mission of office; duties.  
Sec. 233. Definition of law enforcement technology.  
Sec. 234. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions.  
Sec. 235. National Law Enforcement and Corrections Technology Centers.  
Sec. 236. Coordination with other entities within Department of Justice.  
Sec. 237. Amendments relating to National Institute of Justice.

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## **TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION**

### **Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information**

#### **SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.**

(a) UNDER SECRETARY OF HOMELAND SECURITY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—

(1) IN GENERAL.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Under Secretary shall assist the Secretary in discharging the responsibilities assigned by the Secretary.

(b) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—

(1) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) RESPONSIBILITIES.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) DISCHARGE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) RESPONSIBILITIES OF UNDER SECRETARY.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

(A) identify and assess the nature and scope of terrorist threats to the homeland;

(B) detect and identify threats of terrorism against the United States; and

- (C) understand such threats in light of actual and potential vulnerabilities of the homeland.
- (2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).
- (3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.
- (4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.
- (5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.
- (6) To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.
- (7) To administer the Homeland Security Advisory System, including—
- (A) exercising primary responsibility for public advisories related to threats to homeland security; and
- (B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.
- (8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.
- (9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local govern-

ments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their

ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) FUNCTIONS TRANSFERRED.—In accordance with title XV, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(h) INCLUSION OF CERTAIN ELEMENTS OF THE DEPARTMENT AS ELEMENTS OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)) is amended—

(1) by striking “and” at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

“(J) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information; and”.

**SEC. 202. ACCESS TO INFORMATION.**

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) OTHER INFORMATION.—The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) MANNER OF ACCESS.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18, United States Code.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

(1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or any other element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

(2) SHARING OF INFORMATION.—The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

## **Subtitle B—Critical Infrastructure Information**

### **SEC. 211. SHORT TITLE.**

This subtitle may be cited as the “Critical Infrastructure Information Act of 2002”.

### **SEC. 212. DEFINITIONS.**

In this subtitle:

(1) AGENCY.—The term “agency” has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term “covered Federal agency” means the Department of Homeland Security.

(3) **CRITICAL INFRASTRUCTURE INFORMATION.**—The term “critical infrastructure information” means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) **CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.**—The term “critical infrastructure protection program” means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) **INFORMATION SHARING AND ANALYSIS ORGANIZATION.**—The term “Information Sharing and Analysis Organization” means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) **PROTECTED SYSTEM.**—The term “protected system”—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or com-

munications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.—

(A) IN GENERAL.—The term “voluntary”, in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency’s exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) EXCLUSIONS.—The term “voluntary”—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

**SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.**

A critical infrastructure protection program may be designated as such by one of the following:

- (1) The President.
- (2) The Secretary of Homeland Security.

**SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.**

(a) PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term “express statement”, with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: “This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.”; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this

subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) PROCEDURES.—

(1) IN GENERAL.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) ELEMENTS.—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) PENALTIES.—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States

Code, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

(g) **AUTHORITY TO ISSUE WARNINGS.**—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) **AUTHORITY TO DELEGATE.**—The President may delegate authority to a critical infrastructure protection program, designated under section 213, to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

**SEC. 215. NO PRIVATE RIGHT OF ACTION.**

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

## **Subtitle C—Information Security**

**SEC. 221. PROCEDURES FOR SHARING INFORMATION.**

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

**SEC. 222. PRIVACY OFFICER.**

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

**SEC. 223. ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.**

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

**SEC. 224. NET GUARD.**

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as “NET Guard”, comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

**SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.**

(a) **SHORT TITLE.**—This section may be cited as the “Cyber Security Enhancement Act of 2002”.

(b) **AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER CRIMES.**—

(1) **DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(2) **REQUIREMENTS.**—In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) **STUDY AND REPORT ON COMPUTER CRIMES.**—Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18, United States Code.

(d) **EMERGENCY DISCLOSURE EXCEPTION.**—

(1) **IN GENERAL.**—Section 2702(b) of title 18, United States Code, is amended—

(A) in paragraph (5), by striking “or” at the end;

(B) in paragraph (6)(A), by inserting “or” at the end;

(C) by striking paragraph (6)(C); and

(D) by adding at the end the following:

“(7) to a Federal, State, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.”.

(2) **REPORTING OF DISCLOSURES.**—A government entity that receives a disclosure under section 2702(b) of title 18, United States Code, shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if

any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after the date of enactment of this Act.

(e) GOOD FAITH EXCEPTION.—Section 2520(d)(3) of title 18, United States Code, is amended by inserting “or 2511(2)(i)” after “2511(3)”.

(f) INTERNET ADVERTISING OF ILLEGAL DEVICES.—Section 2512(1)(c) of title 18, United States Code, is amended—

(1) by inserting “or disseminates by electronic means” after “or other publication”; and

(2) by inserting “knowing the content of the advertisement and” before “knowing or having reason to know”.

(g) STRENGTHENING PENALTIES.—Section 1030(c) of title 18, United States Code, is amended—

(1) by striking “and” at the end of paragraph (3);

(2) in each of subparagraphs (A) and (C) of paragraph (4), by inserting “except as provided in paragraph (5),” before “a fine under this title”;

(3) in paragraph (4)(C), by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following:

“(5)(A) if the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for not more than 20 years, or both; and

“(B) if the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for any term of years or for life, or both.”.

(h) PROVIDER ASSISTANCE.—

(1) SECTION 2703.—Section 2703(e) of title 18, United States Code, is amended by inserting “, statutory authorization” after “subpoena”.

(2) SECTION 2511.—Section 2511(2)(a)(ii) of title 18, United States Code, is amended by inserting “, statutory authorization,” after “court order” the last place it appears.

(i) EMERGENCIES.—Section 3125(a)(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking “or” at the end;

(2) in subparagraph (B), by striking the comma at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(C) an immediate threat to a national security interest; or

“(D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year;”.

(j) PROTECTING PRIVACY.—

(1) SECTION 2511.—Section 2511(4) of title 18, United States Code, is amended—

(A) by striking paragraph (b); and

(B) by redesignating paragraph (c) as paragraph (b).

(2) SECTION 2701.—Section 2701(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting “, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State” after “commercial gain”;

(B) in paragraph (1)(A), by striking “one year” and inserting “5 years”;

(C) in paragraph (1)(B), by striking “two years” and inserting “10 years”; and

(D) by striking paragraph (2) and inserting the following:

“(2) in any other case—

“(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

“(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.”.

## **Subtitle D—Office of Science and Technology**

### **SEC. 231. ESTABLISHMENT OF OFFICE; DIRECTOR.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this title referred to as the “Office”).

(2) AUTHORITY.—The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be established within the National Institute of Justice.

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

### **SEC. 232. MISSION OF OFFICE; DUTIES.**

(a) MISSION.—The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) DUTIES.—In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative anal-

ysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

(c) **COMPETITION REQUIRED.**—Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

(d) **INFORMATION FROM FEDERAL AGENCIES.**—Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

(e) **PUBLICATIONS.**—Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

(f) **TRANSFER OF FUNDS.**—The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section: *Provided*, That any such transfer or provision of funding shall be carried out in accordance with section 605 of Public Law 107–77.

(g) **ANNUAL REPORT.**—The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director’s assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

**SEC. 233. DEFINITION OF LAW ENFORCEMENT TECHNOLOGY.**

For the purposes of this title, the term “law enforcement technology” includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

**SEC. 234. ABOLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY OF NATIONAL INSTITUTE OF JUSTICE; TRANSFER OF FUNCTIONS.**

(a) **AUTHORITY TO TRANSFER FUNCTIONS.**—The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(b) **TRANSFER OF PERSONNEL AND ASSETS.**—With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office: *Provided*, That any such transfer shall be carried out in accordance with section 605 of Public Law 107–77.

(c) **REPORT ON IMPLEMENTATION.**—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this title. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

**SEC. 235. NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.**

(a) **IN GENERAL.**—The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as “Centers”) and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) **PURPOSE OF CENTERS.**—The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) **ANNUAL MEETING.**—Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) **REPORT.**—Not later than 12 months after the date of the enactment of this Act, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

**SEC. 236. COORDINATION WITH OTHER ENTITIES WITHIN DEPARTMENT OF JUSTICE.**

Section 102 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended in subsection (a)(5) by inserting “coordinate and” before “provide”.

**SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTITUTE OF JUSTICE.**

Section 202(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3722(c)) is amended—

(1) in paragraph (3) by inserting “, including cost effectiveness where practical,” before “of projects”; and

(2) by striking “and” after the semicolon at the end of paragraph (8), striking the period at the end of paragraph (9) and inserting “; and”, and by adding at the end the following:

“(10) research and development of tools and technologies relating to prevention, detection, investigation, and prosecution of crime; and

“(11) support research, development, testing, training, and evaluation of tools and technology for Federal, State, and local law enforcement agencies.”.

## **E. ANNUAL INTELLIGENCE ACTIVITIES AUTHORIZATION ACTS**

### **INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003**

(Public Law 107-306; 116 Stat. 2383; approved November 27, 2002)

AN ACT To authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 2003”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

#### **TITLE I—INTELLIGENCE ACTIVITIES**

- Sec. 101. Authorization of appropriations.
- Sec. 102. Classified schedule of authorizations.
- Sec. 103. Personnel ceiling adjustments.
- Sec. 104. Intelligence Community Management Account.
- Sec. 105. Authorization of emergency supplemental appropriations for fiscal year 2002.
- Sec. 106. Additional authorizations of appropriations for intelligence for the war on terrorism.
- Sec. 107. Specific authorization of funds for intelligence or intelligence-related activities for which fiscal year 2003 appropriations exceed amounts authorized.
- Sec. 108. Incorporation of reporting requirements.
- Sec. 109. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense or Department of Energy.

#### **TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM**

Sec. 201. Authorization of appropriations.

#### **TITLE III—GENERAL PROVISIONS**

##### **Subtitle A—Recurring General Provisions**

- Sec. 301. Increase in employee compensation and benefits authorized by law.
- Sec. 302. Restriction on conduct of intelligence activities.
- Sec. 303. Sense of Congress on intelligence community contracting.

##### **Subtitle B—Intelligence**

- Sec. 311. Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.

- Sec. 312. Prohibition on compliance with requests for information submitted by foreign governments.
- Sec. 313. National Virtual Translation Center.

#### Subtitle C—Personnel

- Sec. 321. Standards and qualifications for the performance of intelligence activities.
- Sec. 322. Modification of excepted agency voluntary leave transfer authority.
- Sec. 323. Sense of Congress on diversity in the workforce of intelligence community agencies.
- Sec. 324. Annual report on hiring and retention of minority employees in the intelligence community.
- Sec. 325. Report on establishment of a Civilian Linguist Reserve Corps.

#### Subtitle D—Education

- Sec. 331. Scholarships and work-study for pursuit of graduate degrees in science and technology.
- Sec. 332. Cooperative relationship between the National Security Education Program and the Foreign Language Center of the Defense Language Institute.
- Sec. 333. Establishment of National Flagship Language Initiative within the National Security Education Program.
- Sec. 334. Report on the National Security Education Program.

#### Subtitle E—Terrorism

- Sec. 341. Foreign Terrorist Asset Tracking Center.
- Sec. 342. Semiannual report on financial intelligence on terrorist assets (FITA).
- Sec. 343. Terrorist Identification Classification System.

#### Subtitle F—Other Matters

- Sec. 351. Additional one-year suspension of reorganization of Diplomatic Telecommunications Service Program Office.
- Sec. 352. Standardized transliteration of names into the Roman alphabet.
- Sec. 353. Definition of congressional intelligence committees in National Security Act of 1947.

### TITLE IV—CENTRAL INTELLIGENCE AGENCY

- Sec. 401. Two-year extension of Central Intelligence Agency Voluntary Separation Pay Act.
- Sec. 402. Implementation of compensation reform plan.

### TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

- Sec. 501. Use of funds for counterdrug and counterterrorism activities for Colombia.
- Sec. 502. Protection of operational files of the National Reconnaissance Office.
- Sec. 503. Eligibility of employees in Intelligence Senior Level positions for Presidential Rank Awards.

### TITLE VI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

- Sec. 601. Establishment of Commission.
- Sec. 602. Purposes.
- Sec. 603. Composition of Commission.
- Sec. 604. Functions of Commission.
- Sec. 605. Powers of Commission.
- Sec. 606. Nonapplicability of Federal Advisory Committee Act.
- Sec. 607. Staff of Commission.
- Sec. 608. Compensation and travel expenses.
- Sec. 609. Security clearances for Commission members and staff.
- Sec. 610. Reports of Commission; termination.
- Sec. 611. Funding.

### TITLE VII—INFORMATION SHARING

- Sec. 701. Short title.
- Sec. 702. Findings and sense of Congress.
- Sec. 703. Facilitating homeland security information sharing procedures.
- Sec. 704. Report.

- Sec. 705. Authorization of appropriations.  
Sec. 706. Coordination provision.

#### TITLE VIII—REPORTING REQUIREMENTS

##### Subtitle A—Overdue Reports

- Sec. 801. Deadline for submittal of various overdue reports.

##### Subtitle B—Submittal of Reports to Intelligence Committees

- Sec. 811. Dates for submittal of various annual and semiannual reports to the congressional intelligence committees.

##### Subtitle C—Recurring Annual Reports

- Sec. 821. Annual report on threat of attack on the United States using weapons of mass destruction.  
Sec. 822. Annual report on covert leases.  
Sec. 823. Annual report on improvement of financial statements of certain elements of the intelligence community for auditing purposes.  
Sec. 824. Annual report on activities of Federal Bureau of Investigation personnel outside the United States.  
Sec. 825. Annual reports of inspectors general of the intelligence community on proposed resources and activities of their offices.  
Sec. 826. Annual report on counterdrug intelligence matters.  
Sec. 827. Annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets.

##### Subtitle D—Other Reports

- Sec. 831. Report on effect of country-release restrictions on allied intelligence-sharing relationships.  
Sec. 832. Evaluation of policies and procedures of Department of State on protection of classified information at department headquarters.

##### Subtitle E—Repeal of Certain Report Requirements

- Sec. 841. Repeal of certain report requirements.

#### TITLE IX—COUNTERINTELLIGENCE ACTIVITIES

- Sec. 901. Short title; purpose.  
Sec. 902. National Counterintelligence Executive.  
Sec. 903. National Counterintelligence Policy Board.  
Sec. 904. Office of the National Counterintelligence Executive.

#### TITLE X—NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY

- Sec. 1001. Findings.  
Sec. 1002. National Commission for the Review of the Research and Development Programs of the United States Intelligence Community.  
Sec. 1003. Powers of Commission.  
Sec. 1004. Staff of Commission.  
Sec. 1005. Compensation and travel expenses.  
Sec. 1006. Treatment of information relating to national security.  
Sec. 1007. Final report; termination.  
Sec. 1008. Assessments of final report.  
Sec. 1009. Inapplicability of certain administrative provisions.  
Sec. 1010. Funding.  
Sec. 1011. Definitions.

## TITLE I—INTELLIGENCE ACTIVITIES

### SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Central Intelligence Agency.

- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.
- (10) The National Reconnaissance Office.
- (11) The National Imagery and Mapping Agency.
- (12) The Coast Guard.

**SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2003, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on H.R. 4628 of the One Hundred Seventh Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

**SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2003 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall notify promptly the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever the Director exercises the authority granted by this section.

**SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of Central Intelligence for fiscal year 2003 the sum of \$158,254,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2004.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 322 full-time personnel as of

September 30, 2003. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2003 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for research and development shall remain available until September 30, 2004.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2003, there are hereby authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2003 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) [21 U.S.C. 873 nt] NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), \$34,100,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2004, and funds provided for procurement purposes shall remain available until September 30, 2005.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403-3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

**SEC. 105. AUTHORIZATION OF EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2002.**

(a) AUTHORIZATION.—Amounts authorized to be appropriated for fiscal year 2002 under section 101 of the Intelligence Authoriza-

tion Act for Fiscal Year 2002 (Public Law 107–108) for the conduct of the intelligence activities of elements of the United States Government listed in such section are hereby increased, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization were increased by the following:

(1) The Emergency Supplemental Act, 2002 (contained in division B of Public Law 107–117), including section 304 of such Act (115 Stat. 2300).

(2) The 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States (Public Law 107–206), for such amounts as are designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)).

(b) RATIFICATION.—For purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414), any obligation or expenditure of those amounts deemed to have been specifically authorized by the Acts referred to in subsection (a) is hereby ratified and confirmed.

**SEC. 106. ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS FOR INTELLIGENCE FOR THE WAR ON TERRORISM.**

(a) IN GENERAL.—Subject to subsection (b), the amounts requested in the letter dated July 3, 2002, of the President to the Speaker of the House of Representatives, related to the Defense Emergency Response Fund and that are designated for the incremental costs of intelligence and intelligence-related activities for the war on terrorism are authorized.

(b) LIMITATIONS.—The amounts referred to in subsection (a)—

(1) are authorized only for activities directly related to identifying, responding to, or protecting against acts or threatened acts of terrorism;

(2) are not authorized to correct programmatic or fiscal deficiencies in major acquisition programs which will not achieve initial operational capabilities within two years of the date of the enactment of this Act; and

(3) are not available until the end of the 10-day period that begins on the date written notice is provided to the Select Committee on Intelligence and the Committee on Appropriations of the Senate and the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives.

**SEC. 107. SPECIFIC AUTHORIZATION OF FUNDS FOR INTELLIGENCE OR INTELLIGENCE-RELATED ACTIVITIES FOR WHICH FISCAL YEAR 2003 APPROPRIATIONS EXCEED AMOUNTS AUTHORIZED.**

Funds appropriated for an intelligence or intelligence-related activity for fiscal year 2003 in excess of the amount specified for such activity in the classified Schedule of Authorizations prepared to accompany this Act shall be deemed to be specifically authorized by Congress for purposes of section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)).

**SEC. 108. INCORPORATION OF REPORTING REQUIREMENTS.**

(a) **IN GENERAL.**—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill H.R. 4628 of the One Hundred Seventh Congress, or in the classified annex to this Act, is hereby incorporated into this Act, and is hereby made a requirement in law.

(b) **CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.**—In this section, the term “congressional intelligence committees” means—

- (1) the Select Committee on Intelligence of the Senate; and
- (2) the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 109. [50 U.S.C. 415b nt] PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE OR DEPARTMENT OF ENERGY.**

(a) **CONSULTATION IN PREPARATION.**—(1) The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations referred to in section 102(a) or the classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or the Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

(2) The Secretary of Defense or the Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or the Department of Energy, as the case may be, designated by such Secretary for that purpose.

(b) **SUBMITTAL.**—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

- (1) The Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate.
- (2) The Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

**TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM****SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2003 the sum of \$222,500,000.

## TITLE III—GENERAL PROVISIONS

### Subtitle A—Recurring General Provisions

#### SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

#### SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

#### SEC. 303. SENSE OF CONGRESS ON INTELLIGENCE COMMUNITY CONTRACTING.

It is the sense of Congress that the Director of Central Intelligence should continue to direct that elements of the intelligence community, whenever compatible with the national security interests of the United States and consistent with operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, should competitively award contracts in a manner that maximizes the procurement of products properly designated as having been made in the United States.

### Subtitle B—Intelligence

#### SEC. 311. SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE.

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by adding at the end the following new section:

“SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE

“SEC. 506. (a) IN GENERAL.—The budget justification materials submitted to Congress in support of the budget of the President for a fiscal year that is submitted to Congress under section 1105(a) of title 31, United States Code, shall set forth separately the aggregate amount requested for that fiscal year for the National Foreign Intelligence Program for each of the following:

- “(1) Counterterrorism.
- “(2) Counterproliferation.
- “(3) Counternarcotics.
- “(4) Counterintelligence.

“(b) ELECTION OF CLASSIFIED OR UNCLASSIFIED FORM.—Amounts set forth under subsection (a) may be set forth in unclassified form or classified form, at the election of the Director of Central Intelligence.”.

(b) CLERICAL AMENDMENT.—The table of sections for that Act is amended by inserting after the item relating to section 505 the following new item:

“Sec. 506. Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.”.

**SEC. 312. PROHIBITION ON COMPLIANCE WITH REQUESTS FOR INFORMATION SUBMITTED BY FOREIGN GOVERNMENTS.**

Section 552(a)(3) of title 5, United States Code, is amended—

(1) in subparagraph (A) by inserting “and except as provided in subparagraph (E),” after “of this subsection,”; and

(2) by adding at the end the following:

“(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

“(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

“(ii) a representative of a government entity described in clause (i).”.

**SEC. 313. [50 U.S.C. 404n] NATIONAL VIRTUAL TRANSLATION CENTER.**

(a) ESTABLISHMENT.—The Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the intelligence community an element with the function of connecting the elements of the intelligence community engaged in the acquisition, storage, translation, or analysis of voice or data in digital form.

(b) DESIGNATION.—The element established under subsection (a) shall be known as the National Virtual Translation Center.

(c) ADMINISTRATIVE MATTERS.—(1) The Director shall retain direct supervision and control over the element established under subsection (a).

(2) The element established under subsection (a) shall connect elements of the intelligence community utilizing the most current available information technology that is applicable to the function of the element.

(d) DEADLINE FOR ESTABLISHMENT.—The element required by subsection (a) shall be established as soon as practicable after the date of the enactment of this Act, but not later than 90 days after that date.

## Subtitle C—Personnel

**SEC. 321. STANDARDS AND QUALIFICATIONS FOR THE PERFORMANCE OF INTELLIGENCE ACTIVITIES.**

Section 104 of the National Security Act of 1947 (50 U.S.C. 403–4) is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

“(g) STANDARDS AND QUALIFICATIONS FOR PERFORMANCE OF INTELLIGENCE ACTIVITIES.—The Director, acting as the head of the intelligence community, shall, in consultation with the heads of ef-

fecting agencies, develop standards and qualifications for persons engaged in the performance of intelligence activities within the intelligence community.”.

**SEC. 322. MODIFICATION OF EXCEPTED AGENCY VOLUNTARY LEAVE TRANSFER AUTHORITY.**

(a) IN GENERAL.—Section 6339 of title 5, United States Code, is amended—

- (1) by striking subsection (b);
- (2) by redesignating subsection (c) as subsection (b); and
- (3) by inserting after subsection (b) (as so redesignated by paragraph (2)) the following:

“(c)(1) Notwithstanding any provision of subsection (b), the head of an excepted agency may, at his sole discretion, by regulation establish a program under which an individual employed in or under such excepted agency may participate in a leave transfer program established under the provisions of this subchapter outside of this section, including provisions permitting the transfer of annual leave accrued or accumulated by such employee to, or permitting such employee to receive transferred leave from, an employee of any other agency (including another excepted agency having a program under this subsection).

“(2) To the extent practicable and consistent with the protection of intelligence sources and methods, any program established under paragraph (1) shall be consistent with the provisions of this subchapter outside of this section and with any regulations issued by the Office of Personnel Management implementing this subchapter.”.

(b) CONFORMING AMENDMENTS.—Section 6339 of such title is amended—

- (1) in paragraph (2) of subsection (b) (as so redesignated by subsection (a)(2)), by striking “under this section” and inserting “under this subsection”; and
- (2) in subsection (d), by striking “of Personnel Management”.

**SEC. 323. SENSE OF CONGRESS ON DIVERSITY IN THE WORKFORCE OF INTELLIGENCE COMMUNITY AGENCIES.**

(a) FINDINGS.—Congress finds the following:

(1) The United States is engaged in a war against terrorism that requires the active participation of the intelligence community.

(2) Certain intelligence agencies, among them the Federal Bureau of Investigation and the Central Intelligence Agency, have announced that they will be hiring several hundred new agents to help conduct the war on terrorism.

(3) Former Directors of the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency have stated that a more diverse intelligence community would be better equipped to gather and analyze information on diverse communities.

(4) The Central Intelligence Agency and the National Security Agency were authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 1987.

(5) The Defense Intelligence Agency was authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 1988.

(6) The National Imagery and Mapping Agency was authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 2000.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Director of the Federal Bureau of Investigation (with respect to the intelligence and intelligence-related activities of the Bureau), the Director of Central Intelligence, the Director of the National Security Agency, and the Director of the Defense Intelligence Agency should make the creation of a more diverse workforce a priority in hiring decisions; and

(2) the Director of Central Intelligence, the Director of the National Security Agency, the Director of the Defense Intelligence Agency, and the Director of the National Imagery and Mapping Agency should increase their minority recruitment efforts through the undergraduate training program provided for under law.

**SEC. 324. ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES IN THE INTELLIGENCE COMMUNITY.**

Section 114 of the National Security Act of 1947 (50 U.S.C. 404i) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

“(c) ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES.—(1) The Director of Central Intelligence shall, on an annual basis, submit to Congress a report on the employment of covered persons within each element of the intelligence community for the preceding fiscal year.

“(2) Each such report shall include disaggregated data by category of covered person from each element of the intelligence community on the following:

“(A) Of all individuals employed in the element during the fiscal year involved, the aggregate percentage of such individuals who are covered persons.

“(B) Of all individuals employed in the element during the fiscal year involved at the levels referred to in clauses (i) and (ii), the percentage of covered persons employed at such levels:

“(i) Positions at levels 1 through 15 of the General Schedule.

“(ii) Positions at levels above GS-15.

“(C) Of all individuals hired by the element involved during the fiscal year involved, the percentage of such individuals who are covered persons.

“(3) Each such report shall be submitted in unclassified form, but may contain a classified annex.

“(4) Nothing in this subsection shall be construed as providing for the substitution of any similar report required under another provision of law.

“(5) In this subsection, the term ‘covered persons’ means—

“(A) racial and ethnic minorities;

“(B) women; and

“(C) individuals with disabilities.”.

**SEC. 325. REPORT ON ESTABLISHMENT OF A CIVILIAN LINGUIST RESERVE CORPS.**

(a) **REPORT.**—The Secretary of Defense, acting through the Director of the National Security Education Program, shall prepare a report on the feasibility of establishing a Civilian Linguist Reserve Corps comprised of individuals with advanced levels of proficiency in foreign languages who are United States citizens who would be available upon a call of the President to perform such service or duties with respect to such foreign languages in the Federal Government as the President may specify. In preparing the report, the Secretary shall consult with such organizations having expertise in training in foreign languages as the Secretary determines appropriate.

(b) **MATTERS CONSIDERED.**—

(1) **IN GENERAL.**—In conducting the study, the Secretary shall develop a proposal for the structure and operations of the Civilian Linguist Reserve Corps. The proposal shall establish requirements for performance of duties and levels of proficiency in foreign languages of the members of the Civilian Linguist Reserve Corps, including maintenance of language skills and specific training required for performance of duties as a linguist of the Federal Government, and shall include recommendations on such other matters as the Secretary determines appropriate.

(2) **CONSIDERATION OF USE OF DEFENSE LANGUAGE INSTITUTE AND LANGUAGE REGISTRIES.**—In developing the proposal under paragraph (1), the Secretary shall consider the appropriateness of using—

(A) the Defense Language Institute to conduct testing for language skills proficiency and performance, and to provide language refresher courses; and

(B) foreign language skill registries of the Department of Defense or of other agencies or departments of the United States to identify individuals with sufficient proficiency in foreign languages.

(3) **CONSIDERATION OF THE MODEL OF THE RESERVE COMPONENTS OF THE ARMED FORCES.**—In developing the proposal under paragraph (1), the Secretary shall consider the provisions of title 10, United States Code, establishing and governing service in the Reserve Components of the Armed Forces, as a model for the Civilian Linguist Reserve Corps.

(c) **COMPLETION OF REPORT.**—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to Congress the report prepared under subsection (a).

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Defense \$300,000 to carry out this section.

## Subtitle D—Education

### SEC. 331. SCHOLARSHIPS AND WORK-STUDY FOR PURSUIT OF GRADUATE DEGREES IN SCIENCE AND TECHNOLOGY.

(a) PROGRAM AUTHORIZED.—The National Security Act of 1947 is amended—

- (1) by redesignating title X as title XI;
- (2) by redesignating section 1001 as section 1101; and
- (3) by inserting after title IX the following new title X:

“TITLE X—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

“SCHOLARSHIPS AND WORK-STUDY FOR PURSUIT OF GRADUATE DEGREES IN SCIENCE AND TECHNOLOGY

“SEC. 1001. (a) PROGRAM AUTHORIZED.—The Director of Central Intelligence may carry out a program to provide scholarships and work-study for individuals who are pursuing graduate degrees in fields of study in science and technology that are identified by the Director as appropriate to meet the future needs of the intelligence community for qualified scientists and engineers.

“(b) ADMINISTRATION.—If the Director carries out the program under subsection (a), the Director shall administer the program through the Assistant Director of Central Intelligence for Administration.

“(c) IDENTIFICATION OF FIELDS OF STUDY.—If the Director carries out the program under subsection (a), the Director shall identify fields of study under subsection (a) in consultation with the other heads of the elements of the intelligence community.

“(d) ELIGIBILITY FOR PARTICIPATION.—An individual eligible to participate in the program is any individual who—

“(1) either—

“(A) is an employee of the intelligence community; or

“(B) meets criteria for eligibility for employment in the intelligence community that are established by the Director;

“(2) is accepted in a graduate degree program in a field of study in science or technology identified under subsection (a); and

“(3) is eligible for a security clearance at the level of Secret or above.

“(e) REGULATIONS.—If the Director carries out the program under subsection (a), the Director shall prescribe regulations for purposes of the administration of this section.”

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by striking the items relating to title X and section 1001 and inserting the following new items:

“TITLE X—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

“Sec. 1001. Scholarships and work-study for pursuit of graduate degrees in science and technology.

“TITLE XI—OTHER PROVISIONS

“Sec. 1101. Applicability to United States intelligence activities of Federal laws implementing international treaties and agreements.”

**SEC. 332. COOPERATIVE RELATIONSHIP BETWEEN THE NATIONAL SECURITY EDUCATION PROGRAM AND THE FOREIGN LANGUAGE CENTER OF THE DEFENSE LANGUAGE INSTITUTE.**

Section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended by adding at the end the following new subsection:

“(h) USE OF AWARDS TO ATTEND THE FOREIGN LANGUAGE CENTER OF THE DEFENSE LANGUAGE INSTITUTE.—(1) The Secretary shall provide for the admission of award recipients to the Foreign Language Center of the Defense Language Institute (hereinafter in this subsection referred to as the ‘Center’). An award recipient may apply a portion of the applicable scholarship or fellowship award for instruction at the Center on a space-available basis as a Department of Defense sponsored program to defray the additive instructional costs.

“(2) Except as the Secretary determines necessary, an award recipient who receives instruction at the Center shall be subject to the same regulations with respect to attendance, discipline, discharge, and dismissal as apply to other persons attending the Center.

“(3) In this subsection, the term ‘award recipient’ means an undergraduate student who has been awarded a scholarship under subsection (a)(1)(A) or a graduate student who has been awarded a fellowship under subsection (a)(1)(B) who—

“(A) is in good standing;

“(B) has completed all academic study in a foreign country, as provided for under the scholarship or fellowship; and

“(C) would benefit from instruction provided at the Center.”.

**SEC. 333. ESTABLISHMENT OF NATIONAL FLAGSHIP LANGUAGE INITIATIVE WITHIN THE NATIONAL SECURITY EDUCATION PROGRAM.**

(a) NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—

(1) EXPANSION OF GRANT PROGRAM AUTHORITY.—Subsection (a)(1) of section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(A) by striking “and” at the end of subparagraph (B)(ii);

(B) by striking the period at the end of subparagraph (C) and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(D) awarding grants to institutions of higher education to carry out activities under the National Flagship Language Initiative (described in subsection (i)).”.

(2) PROVISIONS OF NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—Such section, as amended by section 332, is further amended by adding at the end the following new subsection:

“(i) NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—(1) Under the National Flagship Language Initiative, institutions of higher education shall establish, operate, or improve activities designed to train students in programs in a range of disciplines to achieve advanced levels of proficiency in those foreign languages that the Secretary identifies as being the most critical in the interests of the national security of the United States.

“(2) An undergraduate student who has been awarded a scholarship under subsection (a)(1)(A) or a graduate student who has been awarded a fellowship under subsection (a)(1)(B) may participate in the activities carried out under the National Flagship Language Initiative.

“(3) An institution of higher education that receives a grant pursuant to subsection (a)(1)(D) shall give special consideration to applicants who are employees of the Federal Government.

“(4) For purposes of this subsection, the Foreign Language Center of the Defense Language Institute and any other educational institution that provides training in foreign languages operated by the Department of Defense or an agency in the intelligence community is deemed to be an institution of higher education, and may carry out the types of activities permitted under the National Flagship Language Initiative.”.

(3) INAPPLICABILITY OF FUNDING ALLOCATION RULES.—Subsection (a)(2) of such section is amended by adding at the end the following flush sentences:

“The funding allocation under this paragraph shall not apply to grants under paragraph (1)(D) for the National Flagship Language Initiative described in subsection (i). For the authorization of appropriations for the National Flagship Language Initiative, see section 811.”.

(4) BOARD REQUIREMENT.—Section 803(d)(4) of such Act (50 U.S.C. 1903(d)(4)) is amended—

- (A) by striking “and” at the end of subparagraph (C);
- (B) by striking the period at the end of subparagraph (D) and inserting “; and”; and
- (C) by adding at the end the following new subparagraph:

“(E) which foreign languages are critical to the national security interests of the United States for purposes of section 802(a)(1)(D) (relating to grants for the National Flagship Language Initiative).”.

(b) FUNDING.—The David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.) is amended by adding at the end the following new section:

**“SEC. 811. ADDITIONAL ANNUAL AUTHORIZATION OF APPROPRIATIONS.**

“(a) IN GENERAL.—In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, there is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2003, \$10,000,000, to carry out the grant program for the National Flagship Language Initiative under section 802(a)(1)(D).

“(b) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) shall remain available until expended.”.

(c) [50 U.S.C. 1902 nt] EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the Secretary of Defense submits the report required under section 334 of this Act and notifies the appropriate committees of Congress (as defined in subsection (c) of that section) that the programs carried out under the David L. Boren National Security Education Act of 1991 are being managed in a fiscally and programmatically sound manner.

(d) **[50 U.S.C. 1902 nt] CONSTRUCTION.**—Nothing in this section shall be construed as affecting any program or project carried out under the David L. Boren National Security Education Act of 1991 as in effect on the date that precedes the date of the enactment of this Act.

**SEC. 334. REPORT ON THE NATIONAL SECURITY EDUCATION PROGRAM.**

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the matters described in subsection (b) with respect to the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.).

(b) **COVERED MATTERS.**—The matters described in this subsection are as follows:

(1) **EFFECTIVENESS OF PROGRAM.**—An evaluation of the National Security Education Program, including an assessment of the effectiveness of the program in meeting its goals and an assessment of the administrative costs of the program in relation to the amounts of scholarships, fellowships, and grants awarded.

(2) **CONVERSION OF FUNDING.**—An assessment of the advisability of converting funding of the National Security Education Program from funding through the National Security Education Trust Fund under section 804 of that Act (50 U.S.C. 1904) to funding through appropriations.

(3) **RECOMMENDATIONS.**—On any matter covered by paragraph (1) or (2), such recommendations for legislation with respect to such matter as the Secretary considers appropriate.

(c) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

(1) the Select Committee on Intelligence and the Committees on Armed Services and Appropriations of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committees on Armed Services and Appropriations of the House of Representatives.

## **Subtitle E—Terrorism**

**SEC. 341. [50 U.S.C. 404n-1] FOREIGN TERRORIST ASSET TRACKING CENTER.**

(a) **ESTABLISHMENT.**—The Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency an element responsible for conducting all-source intelligence analysis of information relating to the financial capabilities, practices, and activities of individuals, groups, and nations associated with international terrorism in their activities relating to international terrorism.

(b) **DESIGNATION.**—The element established under subsection (a) shall be known as the Foreign Terrorist Asset Tracking Center.

(c) **DEADLINE FOR ESTABLISHMENT.**—The element required by subsection (a) shall be established as soon as practicable after the date of the enactment of this Act, but not later than 90 days after that date.

**SEC. 342. SEMIANNUAL REPORT ON FINANCIAL INTELLIGENCE ON TERRORIST ASSETS (FITA).****(a) SEMIANNUAL REPORT.—**

**(1) IN GENERAL.—**Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by adding at the end the following new section:

“SEMIANNUAL REPORT ON FINANCIAL INTELLIGENCE ON TERRORIST  
ASSETS

“SEC. 118. (a) SEMIANNUAL REPORT.—On a semiannual basis, the Secretary of the Treasury (acting through the head of the Office of Intelligence Support) shall submit a report to the appropriate congressional committees that fully informs the committees concerning operations against terrorist financial networks. Each such report shall include with respect to the preceding six-month period—

“(1) the total number of asset seizures, designations, and other actions against individuals or entities found to have engaged in financial support of terrorism;

“(2) the total number of applications for asset seizure and designations of individuals or entities suspected of having engaged in financial support of terrorist activities that were granted, modified, or denied;

“(3) the total number of physical searches of offices, residences, or financial records of individuals or entities suspected of having engaged in financial support for terrorist activity; and

“(4) whether the financial intelligence information seized in these cases has been shared on a full and timely basis with the all departments, agencies, and other entities of the United States Government involved in intelligence activities participating in the Foreign Terrorist Asset Tracking Center.

“(b) IMMEDIATE NOTIFICATION FOR EMERGENCY DESIGNATION.—In the case of a designation of an individual or entity, or the assets of an individual or entity, as having been found to have engaged in terrorist activities, the Secretary of the Treasury shall report such designation within 24 hours of such a designation to the appropriate congressional committees.

“(c) SUBMITTAL DATE OF REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of the reports required to be submitted under subsection (a) to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 507.

“(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ‘appropriate congressional committees’ means the following:

“(1) The Permanent Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Financial Services of the House of Representatives.

“(2) The Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate.”.

(2) CLERICAL AMENDMENT.—The table of contents contained in the first section of such Act is amended by inserting after the item relating to section 117 the following new item:

“Sec. 118. Semiannual report on financial intelligence on terrorist assets.”.

(b) CONFORMING AMENDMENT.—Section 501(f) of the National Security Act of 1947 (50 U.S.C. 413(f)) is amended by inserting before the period the following: “, and includes financial intelligence activities”.

**SEC. 343. [50 U.S.C. 404n-2] TERRORIST IDENTIFICATION CLASSIFICATION SYSTEM.**

(a) REQUIREMENT.—(1) The Director of Central Intelligence, acting as head of the Intelligence Community, shall—

(A) establish and maintain a list of individuals who are known or suspected international terrorists, and of organizations that are known or suspected international terrorist organizations; and

(B) ensure that pertinent information on the list is shared with the departments, agencies, and organizations described by subsection (c).

(2) The list under paragraph (1), and the mechanisms for sharing information on the list, shall be known as the “Terrorist Identification Classification System”.

(b) ADMINISTRATION.—(1) The Director shall prescribe requirements for the inclusion of an individual or organization on the list required by subsection (a), and for the deletion or omission from the list of an individual or organization currently on the list.

(2) The Director shall ensure that the information utilized to determine the inclusion, or deletion or omission, of an individual or organization on or from the list is derived from all-source intelligence.

(3) The Director shall ensure that the list is maintained in accordance with existing law and regulations governing the collection, storage, and dissemination of intelligence concerning United States persons.

(c) INFORMATION SHARING.—Subject to section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403-3(c)(6)), relating to the protection of intelligence sources and methods, the Director shall provide for the sharing of the list, and information on the list, with such departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations as the Director considers appropriate.

(d) REPORTING AND CERTIFICATION.—(1) The Director shall review on an annual basis the information provided by various departments and agencies for purposes of the list under subsection (a) in order to determine whether or not the information so provided is derived from the widest possible range of intelligence available to such departments and agencies.

(2) The Director shall, as a result of each review under paragraph (1), certify whether or not the elements of the intelligence community responsible for the collection of intelligence related to the list have provided information for purposes of the list that is derived from the widest possible range of intelligence available to such department and agencies.

(e) REPORT ON CRITERIA FOR INFORMATION SHARING.—(1) Not later than March 1, 2003, the Director shall submit to the congressional intelligence committees a report describing the criteria used to determine which types of information on the list required by subsection (a) are to be shared, and which types of information are not to be shared, with various departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations.

(2) The report shall include a description of the circumstances in which the Director has determined that sharing information on the list with the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c) would be inappropriate due to the concerns addressed by section 103(c)(6) of the National Security Act of 1947, relating to the protection of sources and methods, and any instance in which the sharing of information on the list has been inappropriate in light of such concerns.

(f) SYSTEM ADMINISTRATION REQUIREMENTS.—(1) The Director shall, to the maximum extent practicable, ensure the interoperability of the Terrorist Identification Classification System with relevant information systems of the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c).

(2) The Director shall ensure that the System utilizes technologies that are effective in aiding the identification of individuals in the field.

(g) REPORT ON STATUS OF SYSTEM.—(1) Not later than one year after the date of the enactment of this Act, the Director shall, in consultation with the Director of Homeland Security, submit to the congressional intelligence committees a report on the status of the Terrorist Identification Classification System. The report shall contain a certification on the following:

(A) Whether the System contains the intelligence information necessary to facilitate the contribution of the System to the domestic security of the United States.

(B) Whether the departments and agencies having access to the System have access in a manner that permits such departments and agencies to carry out appropriately their domestic security responsibilities.

(C) Whether the System is operating in a manner that maximizes its contribution to the domestic security of the United States.

(D) If a certification under subparagraph (A), (B), or (C) is in the negative, the modifications or enhancements of the System necessary to ensure a future certification in the positive.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

(h) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means—

- (1) the Select Committee on Intelligence of the Senate; and
- (2) the Permanent Select Committee on Intelligence of the House of Representatives.

## Subtitle F—Other Matters

### SEC. 351. ADDITIONAL ONE-YEAR SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

Section 311 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107-108; 22 U.S.C. 7301 note; 115 Stat. 1401) is amended—

(1) in the heading, by striking “**ONE-YEAR**” and inserting “**TWO-YEAR**”; and

(2) in the text, by striking “October 1, 2002” and inserting “October 1, 2003”.

### SEC. 352. [50 U.S.C. 403-3 nt] STANDARDIZED TRANSLITERATION OF NAMES INTO THE ROMAN ALPHABET.

(a) METHOD OF TRANSLITERATION REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Director of Central Intelligence shall provide for a standardized method for transliterating into the Roman alphabet personal and place names originally rendered in any language that uses an alphabet other than the Roman alphabet.

(b) USE BY INTELLIGENCE COMMUNITY.—The Director shall ensure the use of the method established under subsection (a) in—

(1) all communications among the elements of the intelligence community; and

(2) all intelligence products of the intelligence community.

### SEC. 353. DEFINITION OF CONGRESSIONAL INTELLIGENCE COMMITTEES IN NATIONAL SECURITY ACT OF 1947.

(a) IN GENERAL.—Section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended by adding at the end the following new paragraph:

“(7) The term ‘congressional intelligence committees’ means—

“(A) the Select Committee on Intelligence of the Senate; and

“(B) the Permanent Select Committee on Intelligence of the House of Representatives.”.

(b) CONFORMING AMENDMENTS.—(1) That Act is further amended by striking “Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives” and inserting “congressional intelligence committees” in each of the following provisions:

(A) Section 104(d)(4) (50 U.S.C. 403-4(d)(4)).

(B) Section 603(a) (50 U.S.C. 423(a)).

(2) That Act is further amended by striking “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate” and inserting “congressional intelligence committees” in each of the following provisions:

(A) Section 301(j) (50 U.S.C. 409a(j)).

(B) Section 801(b)(2) (50 U.S.C. 435(b)(2)).

(C) Section 903 (50 U.S.C. 441b).

(3) That Act is further amended by striking “intelligence committees” and inserting “congressional intelligence committees” each place it appears in each of the following provisions:

- (A) Section 501 (50 U.S.C. 413).
  - (B) Section 502 (50 U.S.C. 413a).
  - (C) Section 503 (50 U.S.C. 413b).
  - (D) Section 504(d)(2) (50 U.S.C. 414(d)(2)).
- (4) Section 104(d)(5) of that Act (50 U.S.C. 403–4(d)(5)) is amended by striking “Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives” and inserting “congressional intelligence committees”.
- (5) Section 105C(a)(3)(C) of that Act (50 U.S.C. 403–5c(a)(3)(C)) is amended—
- (A) by striking clauses (i) and (ii) and inserting the following new clause (i):
    - “(i) The congressional intelligence committees.”; and
  - (B) by redesignating clauses (iii), (iv), (v), and (vi) as clauses (ii), (iii), (iv), and (v), respectively.
- (6) Section 114 of that Act (50 U.S.C. 404i), as amended by section 324, is amended by striking subsection (d), as so redesignated, and inserting the following new subsection (d):
- “(d) CONGRESSIONAL LEADERSHIP DEFINED.—In this section, the term ‘congressional leadership’ means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.”.
- (7) Section 501(a) of that Act (50 U.S.C. 413(a)), as amended by paragraph (3) of this subsection, is further amended—
- (A) by striking paragraph (2); and
  - (B) by redesignating paragraph (3) as paragraph (2).
- (8) Section 503(c)(4) of that Act (50 U.S.C. 413b(c)(4)) is amended by striking “intelligence committee” and inserting “congressional intelligence committee”.
- (9) Section 602(c) of that Act (50 U.S.C. 422(c)) is amended by striking “the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives” and inserting “either congressional intelligence committee”.
- (10) Section 701(c)(3) of that Act (50 U.S.C. 431(c)(3)) is amended by striking “intelligence committees of the Congress” and inserting “congressional intelligence committees”.

## **TITLE IV—CENTRAL INTELLIGENCE AGENCY**

### **SEC. 401. TWO-YEAR EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION PAY ACT.**

Section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4 note) is amended—

- (1) in subsection (f), by striking “September 30, 2003” and inserting “September 30, 2005”; and
- (2) in subsection (i), by striking “or 2003” and inserting “2003, 2004, or 2005”.

### **SEC. 402. [50 U.S.C. 403–4 nt] IMPLEMENTATION OF COMPENSATION REFORM PLAN.**

(a) DELAY ON IMPLEMENTATION ON COMPENSATION REFORM PLAN.—(1) The Director of Central Intelligence may not implement

before the implementation date (described in paragraph (2)) a plan for the compensation of employees of the Central Intelligence Agency that differs from the plan in effect on October 1, 2002.

(2) The implementation date referred to in paragraph (1) is February 1, 2004, or the date on which the Director submits to the congressional intelligence committees a report on the pilot project conducted under subsection (b), whichever is later.

(3) It is the sense of Congress that an employee performance evaluation mechanism with evaluation training for managers and employees of the Central Intelligence Agency should be phased in before the implementation of any new compensation plan.

(b) PILOT PROJECT.—(1) The Director shall conduct a pilot project to test the efficacy and fairness of a plan for the compensation of employees of the Central Intelligence Agency that differs from the plan in effect on October 1, 2002, within any one component of the Central Intelligence Agency selected by the Director, other than a component for which a pilot project on employee compensation has been previously conducted.

(2) The pilot project under paragraph (1) shall be conducted for a period of at least 1 year.

(3) Not later than the date that is 45 days after the completion of the pilot project under paragraph (1), the Director shall submit to the congressional intelligence committees a report that contains an evaluation of the project and such recommendations as the Director considers appropriate for the modification of the plans for the compensation of employees throughout the Agency which are in effect on such date.

(c) SENSE OF CONGRESS ON IMPLEMENTATION OF COMPENSATION REFORM PLAN FOR THE NATIONAL SECURITY AGENCY.—It is the sense of Congress that—

(1) the Director of the National Security Agency should not implement before February 1, 2004, a plan for the compensation of employees of the National Security Agency that differs from the plan in effect on October 1, 2002; and

(2) an employee performance evaluation mechanism with evaluation training for managers and employees of the National Security Agency should be phased in before the implementation of any new compensation plan.

(d) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

## **TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

### **SEC. 501. USE OF FUNDS FOR COUNTERDRUG AND COUNTERTERRORISM ACTIVITIES FOR COLOMBIA.**

(a) AUTHORITY.—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities for fiscal years 2002 and 2003, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall

be available to support a unified campaign against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)), and to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.

(b) REQUIREMENT FOR CERTIFICATION.—(1) The authorities provided in subsection (a) shall not be exercised until the Secretary of Defense certifies to the Congress that the provisions of paragraph (2) have been complied with.

(2) In order to ensure the effectiveness of United States support for such a unified campaign, prior to the exercise of the authority contained in subsection (a), the Secretary of State shall report to the appropriate committees of Congress that the newly elected President of Colombia has—

(A) committed, in writing, to establish comprehensive policies to combat illicit drug cultivation, manufacturing, and trafficking (particularly with respect to providing economic opportunities that offer viable alternatives to illicit crops) and to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations;

(B) committed, in writing, to implement significant budgetary and personnel reforms of the Colombian Armed Forces; and

(C) committed, in writing, to support substantial additional Colombian financial and other resources to implement such policies and reforms, particularly to meet the country's previous commitments under "Plan Colombia".

In this paragraph, the term "appropriate committees of Congress" means the Permanent Select Committee on Intelligence and the Committees on Appropriations and Armed Services of the House of Representatives and the Select Committee on Intelligence and the Committees on Appropriations and Armed Services of the Senate.

(c) TERMINATION OF AUTHORITY.—The authority provided in subsection (a) shall cease to be effective if the Secretary of Defense has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(d) APPLICATION OF CERTAIN PROVISIONS OF LAW.—Sections 556, 567, and 568 of Public Law 107-115, section 8093 of the Department of Defense Appropriations Act, 2002, and the numerical limitations on the number of United States military personnel and United States individual civilian contractors in section 3204(b)(1) of Public Law 106-246 shall be applicable to funds made available pursuant to the authority contained in subsection (a).

(e) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self defense or rescuing any United States citizen to include

United States Armed Forces personnel, United States civilian employees, and civilian contractors employed by the United States.

**SEC. 502. PROTECTION OF OPERATIONAL FILES OF THE NATIONAL RECONNAISSANCE OFFICE.**

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by inserting after section 105C (50 U.S.C. 403–5c) the following new section:

“PROTECTION OF OPERATIONAL FILES OF THE NATIONAL  
RECONNAISSANCE OFFICE

“SEC. 105D. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the National Reconnaissance Office, with the coordination of the Director of Central Intelligence, may exempt operational files of the National Reconnaissance Office from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

“(2)(A) Subject to subparagraph (B), for the purposes of this section, the term ‘operational files’ means files of the National Reconnaissance Office (hereafter in this section referred to as ‘NRO’) that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

“(B) Files which are the sole repository of disseminated intelligence are not operational files.

“(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

“(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code;

“(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code; or

“(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

“(i) The Permanent Select Committee on Intelligence of the House of Representatives.

“(ii) The Select Committee on Intelligence of the Senate.

“(iii) The Intelligence Oversight Board.

“(iv) The Department of Justice.

“(v) The Office of General Counsel of NRO.

“(vi) The Office of the Director of NRO.

“(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

“(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

“(C) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.

“(D) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1) and which have been returned to exempted operational files for sole retention shall be subject to search and review.

“(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of this section, and which specifically cites and repeals or modifies its provisions.

“(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NRO has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

“(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

“(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NRO, such information shall be examined *ex parte*, *in camera* by the court.

“(ii) The court shall, to the fullest extent practicable, determine the issues of fact based on sworn written submissions of the parties.

“(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

“(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NRO shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

“(II) The court may not order NRO to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NRO’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

“(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

“(vi) If the court finds under this paragraph that NRO has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NRO to search and review the appropriate exempted

operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this subsection.

“(vii) If at any time following the filing of a complaint pursuant to this paragraph NRO agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

“(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence prior to submission to the court.

“(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—

(1) Not less than once every 10 years, the Director of the National Reconnaissance Office and the Director of Central Intelligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

“(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

“(3) A complainant that alleges that NRO has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court’s review shall be limited to determining the following:

“(A) Whether NRO has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of this section or before the expiration of the 10-year period beginning on the date of the most recent review.

“(B) Whether NRO, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.”.

(b) CLERICAL AMENDMENT.—The table of sections for that Act is amended by inserting after the item relating to section 105C the following new item:

“Sec. 105D. Protection of operational files of the National Reconnaissance Office.”.

**SEC. 503. ELIGIBILITY OF EMPLOYEES IN INTELLIGENCE SENIOR LEVEL POSITIONS FOR PRESIDENTIAL RANK AWARDS.**

Section 1607 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c) AWARD OF RANK TO EMPLOYEES IN INTELLIGENCE SENIOR LEVEL POSITIONS.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507a of title 5 to employees in Intelligence Senior Level positions designated under subsection (a). The award of such rank shall be made in a manner consistent with the provisions of that section.”.

## TITLE VI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

### SEC. 601. [6 U.S.C. 101 nt] ESTABLISHMENT OF COMMISSION.

There is established in the legislative branch the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the “Commission”).

### SEC. 602. [6 U.S.C. 101 nt] PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York, in Somerset County, Pennsylvania, and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001, (hereinafter in this title referred to as the “Joint Inquiry”); and

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States’ preparedness for, and immediate response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

### SEC. 603. [6 U.S.C. 101 nt] COMPOSITION OF COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 1 member shall be appointed by the President, who shall serve as chairman of the Commission;

(2) 1 member shall be appointed by the leader of the Senate (majority or minority leader, as the case may be) of the Democratic Party, in consultation with the leader of the House of Representatives (majority or minority leader, as the case may be) of the Democratic Party, who shall serve as vice chairman of the Commission;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party;

(4) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Republican Party;

(5) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party; and

(6) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party.

(b) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, law, public administration, intelligence gathering, commerce (including aviation matters), and foreign affairs.

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed on or before December 15, 2002.

(5) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairman or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

**SEC. 604. [6 U.S.C. 101 nt] FUNCTIONS OF COMMISSION.**

(a) IN GENERAL.—The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation;

(vii) the role of congressional oversight and resource allocation; and

(viii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local

governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

(b) RELATIONSHIP TO INTELLIGENCE COMMITTEES' INQUIRY.—When investigating facts and circumstances relating to the intelligence community, the Commission shall—

(1) first review the information compiled by, and the findings, conclusions, and recommendations of, the Joint Inquiry; and

(2) after that review pursue any appropriate area of inquiry if the Commission determines that—

(A) the Joint Inquiry had not investigated that area;

(B) the Joint Inquiry's investigation of that area had not been complete; or

(C) new information not reviewed by the Joint Inquiry had become available with respect to that area.

**SEC. 605. [6 U.S.C. 101 nt] POWERS OF COMMISSION.**

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) subject to paragraph (2)(A), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—

(i) IN GENERAL.—A subpoena may be issued under this subsection only—

(I) by the agreement of the chairman and the vice chairman; or

(II) by the affirmative vote of 6 members of the Commission.

(ii) SIGNATURE.—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of the chairman or any member designated by a majority of the Commission, and may be served by any person designated by the chairman or by a member designated by a majority of the Commission.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable,

may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) **ADDITIONAL ENFORCEMENT.**—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) **CONTRACTING.**—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) **INFORMATION FROM FEDERAL AGENCIES.**—

(1) **IN GENERAL.**—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(2) **RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.**—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(d) **ASSISTANCE FROM FEDERAL AGENCIES.**—

(1) **GENERAL SERVICES ADMINISTRATION.**—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) **OTHER DEPARTMENTS AND AGENCIES.**—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(e) **GIFTS.**—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) **POSTAL SERVICES.**—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

**SEC. 606. [6 U.S.C. 101 nt] NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**

(a) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(b) PUBLIC MEETINGS AND RELEASE OF PUBLIC VERSIONS OF REPORTS.—The Commission shall—

(1) hold public hearings and meetings to the extent appropriate; and

(2) release public versions of the reports required under section 610(a) and (b).

(c) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

**SEC. 607. [6 U.S.C. 101 nt] STAFF OF COMMISSION.**

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairman, in consultation with vice chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**SEC. 608. [6 U.S.C. 101 nt] COMPENSATION AND TRAVEL EXPENSES.**

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each

day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

**SEC. 609. [6 U.S.C. 101 nt] SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.**

The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this title without the appropriate security clearances.

**SEC. 610. [6 U.S.C. 101 nt] REPORTS OF COMMISSION; TERMINATION.**

(a) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) FINAL REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to the President and Congress a final report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the final report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

**SEC. 611. [6 U.S.C. 101 nt] FUNDING.**

(a) TRANSFER FROM THE NATIONAL FOREIGN INTELLIGENCE PROGRAM.—Of the amounts authorized to be appropriated by this Act and made available in public law 107-248 (Department of Defense Appropriations Act, 2003) for the National Foreign Intelligence Program, not to exceed \$3,000,000 shall be available for transfer to the Commission for purposes of the activities of the Commission under this title.

(b) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (a) shall remain available until the termination of the Commission.

## TITLE VII—INFORMATION SHARING <sup>1</sup>

### SEC. 701. SHORT TITLE.

This title may be cited as the “Homeland Security Information Sharing Act”.

### SEC. 702. FINDINGS AND SENSE OF CONGRESS.

(a) FINDINGS.—The Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes defense against terrorist attacks.

(2) The Federal Government relies on State and local personnel to protect against terrorist attacks.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attacks.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

<sup>1</sup>Section 706(b) of this Act (116 Stat. 2417) provides:

“(b) SUBSEQUENT ENACTMENT.—If the Homeland Security Act of 2002 [November 25, 2002] is enacted before this Act [November 27, 2002], then this title shall not take effect.”

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

**SEC. 703. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.**

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—(1) The President shall prescribe and implement procedures under which relevant Federal agencies determine—

(A) whether, how, and to what extent homeland security information may be shared with appropriate State and local personnel, and with which such personnel it may be shared;

(B) how to identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include one or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this title with respect to such agency.

(e) **FEDERAL CONTROL OF INFORMATION.**—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) **DEFINITIONS.**—As used in this section:

(1) The term “homeland security information” means any information (other than information that includes individually identifiable information collected solely for statistical purposes) possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term “intelligence community” has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term “State and local personnel” means any of the following persons involved in prevention, preparation, or response for terrorist attacks:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal Government in procedures developed pursuant to this section.

(4) The term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

**SEC. 704. REPORT.**

(a) **REPORT REQUIRED.**—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 703. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 703, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) **SPECIFIED CONGRESSIONAL COMMITTEES.**—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

**SEC. 705. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary to carry out section 703.

**SEC. 706. COORDINATION PROVISION.**

(a) **PRIOR ENACTMENT.**—If this Act is enacted before the Homeland Security Act of 2002, then upon the date of the enactment of the Homeland Security Act of 2002, this title shall be deemed for all purposes not to have taken effect and shall cease to be in effect.

(b) **SUBSEQUENT ENACTMENT.**—If the Homeland Security Act of 2002 is enacted before this Act, then this title shall not take effect.

## **TITLE VIII—REPORTING REQUIREMENTS**

### **Subtitle A—Overdue Reports**

**SEC. 801. [50 U.S.C. 415b nt] DEADLINE FOR SUBMITTAL OF VARIOUS OVERDUE REPORTS.**

(a) **DEADLINE.**—The reports described in subsection (c) shall be submitted to Congress not later than 180 days after the date of the enactment of this Act.

(b) **NONCOMPLIANCE.**—(1) If all the reports described in subsection (c) are not submitted to Congress by the date specified in subsection (a), amounts available to be obligated or expended after that date to carry out the functions or duties of the Office of the Director of Central Intelligence shall be reduced by  $\frac{1}{3}$ .

(2) The reduction applicable under paragraph (1) shall not apply if the Director of Central Intelligence certifies to Congress by the date referred to in subsection (a) that all reports referred to in subsection (c) have been submitted to Congress.

(c) **REPORTS DESCRIBED.**—The reports referred to in subsection (a) are reports mandated by law for which the Director of Central Intelligence has sole or primary responsibility to prepare, coordinate, and submit to Congress which, as of the date of the enactment of this Act, have not been submitted to Congress.

### **Subtitle B—Submittal of Reports to Intelligence Committees**

**SEC. 811. DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMI-ANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES.**

(a) **IN GENERAL.**—(1) Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 311 of this Act, is further amended by adding at the end the following new section:

“DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMIANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES

“SEC. 507. (a) **ANNUAL REPORTS.**—(1) The date for the submittal to the congressional intelligence committees of the following

annual reports shall be the date each year provided in subsection (c)(1)(A):

“(A) The annual evaluation of the performance and responsiveness of certain elements of the intelligence community required by section 105(d).

“(B) The annual report on intelligence required by section 109.

“(C) The annual report on intelligence community cooperation with Federal law enforcement agencies required by section 114(a)(2).

“(D) The annual report on the protection of the identities of covert agents required by section 603.

“(E) The annual report of the Inspectors General of the intelligence community on proposed resources and activities of their offices required by section 8H(g) of the Inspector General Act of 1978.

“(F) The annual report on commercial activities as security for intelligence collection required by section 437(c) of title 10, United States Code.

“(G) The annual report on expenditures for postemployment assistance for terminated intelligence employees required by section 1611(e)(2) of title 10, United States Code.

“(H) The annual update on foreign industrial espionage required by section 809(b) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103-359; 50 U.S.C. App. 2170b(b)).

“(I) The annual report on coordination of counterintelligence matters with the Federal Bureau of Investigation required by section 811(c)(6) of the Counterintelligence and Security Enhancements Act of 1994 (50 U.S.C. 402a(c)(6)).

“(J) The annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets required by section 827 of the Intelligence Authorization Act for Fiscal Year 2003.

“(K) The annual report on certifications for immunity in interdiction of aircraft engaged in illicit drug trafficking required by section 1012(c)(2) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291-4(c)(2)).

“(L) The annual report on exceptions to consumer disclosure requirements for national security investigations under section 604(b)(4)(E) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)(E)).

“(M) The annual report on activities under the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102-183; 50 U.S.C. 1901 et seq.) required by section 806(a) of that Act (50 U.S.C. 1906(a)).

“(N) The annual report on hiring and retention of minority employees in the intelligence community required by section 114(c).

“(2) The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1)(B):

“(A) The annual report on the safety and security of Russian nuclear facilities and nuclear military forces required by section 114(b).

“(B) The annual report on the threat of attack on the United States from weapons of mass destruction required by section 114(d).

“(C) The annual report on covert leases required by section 114(e).

“(D) The annual report on improvements of the financial statements of the intelligence community for auditing purposes required by section 114A.

“(E) The annual report on activities of personnel of the Federal Bureau of Investigation outside the United States required by section 540C(c)(2) of title 28, United States Code.

“(F) The annual report on intelligence activities of the People’s Republic of China required by section 308(c) of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 50 U.S.C. 402a note).

“(G) The annual report on counterdrug intelligence matters required by section 826 of the Intelligence Authorization Act for Fiscal Year 2003.

“(b) SEMIANNUAL REPORTS.—The dates for the submittal to the congressional intelligence committees of the following semiannual reports shall be the dates each year provided in subsection (c)(2):

“(1) The periodic reports on intelligence provided to the United Nations required by section 112(b).

“(2) The semiannual reports on the Office of the Inspector General of the Central Intelligence Agency required by section 17(d)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(1)).

“(3) The semiannual reports on decisions not to prosecute certain violations of law under the Classified Information Procedures Act (18 U.S.C. App.) as required by section 13 of that Act.

“(4) The semiannual reports on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions required by section 721(b) of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104–293; 50 U.S.C. 2366(b)).

“(5) The semiannual reports on the activities of the Diplomatic Telecommunications Service Program Office (DTS–PO) required by section 322(a)(6)(D)(ii) of the Intelligence Authorization Act for Fiscal Year 2001 (22 U.S.C. 7302(a)(6)(D)(ii)).

“(6) The semiannual reports on the disclosure of information and consumer reports to the Federal Bureau of Investigation for counterintelligence purposes required by section 624(h)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681u(h)(2)).

“(7) The semiannual provision of information on requests for financial information for foreign counterintelligence purposes required by section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)).

“(8) The semiannual report on financial intelligence on terrorist assets required by section 118.

“(c) SUBMITTAL DATES FOR REPORTS.—(1)(A) Except as provided in subsection (d), each annual report listed in subsection (a)(1) shall be submitted not later than February 1.

“(B) Except as provided in subsection (d), each annual report listed in subsection (a)(2) shall be submitted not later than December 1.

“(2) Except as provided in subsection (d), each semiannual report listed in subsection (b) shall be submitted not later than February 1 and August 1.

“(d) POSTPONEMENT OF SUBMITTAL.—(1) Subject to paragraph (3), the date for the submittal of—

“(A) an annual report listed in subsection (a)(1) may be postponed until March 1;

“(B) an annual report listed in subsection (a)(2) may be postponed until January 1; and

“(C) a semiannual report listed in subsection (b) may be postponed until March 1 or September 1, as the case may be, if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

“(2)(A) Notwithstanding any other provision of law and subject to paragraph (3), the date for the submittal to the congressional intelligence committees of any report described in subparagraph (B) may be postponed by not more than 30 days from the date otherwise specified in the provision of law for the submittal of such report if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

“(B) A report described in this subparagraph is any report on intelligence or intelligence-related activities of the United States Government that is submitted under a provision of law requiring the submittal of only a single report.

“(3)(A) The date for the submittal of a report whose submittal is postponed under paragraph (1) or (2) may be postponed beyond the time provided for the submittal of such report under such paragraph if the official required to submit such report submits to the congressional intelligence committees a written certification that preparation and submittal of such report at such time will impede the work of officers or employees of the intelligence community in a manner that will be detrimental to the national security of the United States.

“(B) A certification with respect to a report under subparagraph (A) shall include a proposed submittal date for such report, and such report shall be submitted not later than that date.”.

(2) The table of sections for the National Security Act of 1947, as amended by section 311 of this Act, is further amended by inserting after the item relating to section 506 the following new item:

“Sec. 507. Dates for submittal of various annual and semiannual reports to the congressional intelligence committees.”.

(b) CONFORMING AMENDMENTS TO EXISTING REPORTING REQUIREMENTS.—

(1) NATIONAL SECURITY ACT OF 1947.—(A) Subsection (d) of section 105 of the National Security Act of 1947 (50 U.S.C. 403–5) is amended to read as follows:

“(d) ANNUAL EVALUATION OF PERFORMANCE AND RESPONSIVENESS OF CERTAIN ELEMENTS OF INTELLIGENCE COMMUNITY.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the evaluation described in paragraph (3).

“(2) The Director shall submit each year to the Committee on Foreign Intelligence of the National Security Council, and to the Committees on Armed Services and Appropriations of the Senate and House of Representatives, the evaluation described in paragraph (3).

“(3) An evaluation described in this paragraph is an evaluation of the performance and responsiveness of the National Security Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency in meeting their respective national missions.

“(4) The Director shall submit each evaluation under this subsection in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff.”

(B) Section 109 of that Act (50 U.S.C. 404d) is amended—

(i) in subsection (a), by striking paragraph (1) and inserting the following new paragraph (1):

“(1)(A) Not later each year than the date provided in section 507, the President shall submit to the congressional intelligence committees a report on the requirements of the United States for intelligence and the activities of the intelligence community.

“(B) Not later than January 31 each year, and included with the budget of the President for the next fiscal year under section 1105(a) of title 31, United States Code, the President shall submit to the appropriate congressional committees the report described in subparagraph (A).”;

(ii) in subsection (c), as amended by section 803(a) of the Intelligence Renewal and Reform Act of 1996 (title VIII of Public Law 104–293; 110 Stat. 3475)—

(I) in paragraph (1), by striking “The Select Committee on Intelligence, the Committee on Appropriations,” and inserting “The Committee on Appropriations”; and

(II) in paragraph (2), by striking “The Permanent Select Committee on Intelligence, the Committee on Appropriations,” and inserting “The Committee on Appropriations”; and

(iii) by striking subsection (c), as added by section 304(a) of the Intelligence Authorization Act for Fiscal Year 1994 (Public Law 103–178; 107 Stat. 2034).

(C) Section 112(b) of that Act (50 U.S.C. 404g(b)) is amended by adding at the end the following new paragraph:

“(3) In the case of periodic reports required to be submitted under the first sentence of paragraph (1) to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 507.”

(D) Section 114 of that Act (50 U.S.C. 404i) is amended—

(i) in subsection (a)—

(I) in paragraph (1), by striking “the congressional intelligence committees and”;

(II) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(III) by inserting after paragraph (1) the following new paragraph (2):

“(2) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the report required to be submitted under paragraph (1) during the preceding year.”; and

(ii) in subsection (b)(1), by striking “, on an annual basis” and all that follows through “leadership” and inserting “submit to the congressional leadership on an annual basis, and to the congressional intelligence committees on the date each year provided in section 507.”.

(E) Section 603 of that Act (50 U.S.C. 423) is amended—

(i) in subsection (a), by adding at the end the following new sentence: “The date for the submittal of the report shall be the date provided in section 507.”; and

(ii) in subsection (b), by striking the second sentence.

(2) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—Section 17(d)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(1)) is amended in the second sentence by striking “Within thirty days of receipt of such reports,” and inserting “Not later than the dates each year provided for the transmittal of such reports in section 507 of the National Security Act of 1947.”.

(3) CLASSIFIED INFORMATION PROCEDURES ACT.—Section 13 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(A) by redesignating subsection (b) as subsection (c); and

(B) by inserting after subsection (a) the following new subsection (b):

“(b) In the case of the semiannual reports (whether oral or written) required to be submitted under subsection (a) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947.”.

(4) TITLE 10, UNITED STATES CODE.—(A) Section 437 of title 10, United States Code, is amended—

(i) in subsection (c), by striking “Not later than” and all that follows through “of Congress” and inserting “Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))”; and

(ii) by striking subsection (d).

(B) Section 1611(e) of that title is amended—

(i) in paragraph (1), by striking “paragraph (2)” and inserting “paragraph (3)”;

(ii) by redesignating paragraph (2) as paragraph (3); and

(iii) by inserting after paragraph (1) the following new paragraph (2):

“(2) In the case of a report required to be submitted under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, the date for the submittal of such report shall be as provided in section 507 of the National Security Act of 1947.”.

(5) INTELLIGENCE AUTHORIZATION ACTS.—(A) Section 809 of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 108 Stat. 3454; 50 U.S.C. App. 2170b) is amended by striking subsection (b) and inserting the following new subsection (b):

“(b) ANNUAL UPDATE.—

“(1) SUBMITTAL TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—Not later each year than the date provided in section 507 of the National Security Act of 1947, the President shall submit to the congressional intelligence committees a report updating the information referred to in subsection (a)(1)(D).

“(2) SUBMITTAL TO CONGRESSIONAL LEADERSHIP.—Not later than April 14 each year, the President shall submit to the congressional leadership a report updating the information referred to in subsection (a)(1)(D).

“(3) DEFINITIONS.—In this subsection:

“(A) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence committees’ has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

“(B) CONGRESSIONAL LEADERSHIP.—The term ‘congressional leadership’ means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.”.

(B) Paragraph (6) of section 811(c) of that Act (50 U.S.C. 402a(c)) is amended to read as follows:

“(6)(A) Not later each year than the date provided in section 507 of the National Security Act of 1947, the Director of the Federal Bureau of Investigation shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

“(B) Not later than February 1 each year, the Director shall, in accordance with applicable security procedures, submit to the Committees on the Judiciary of the Senate and House of Representatives a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

“(C) The Director of the Federal Bureau of Investigation shall submit each report under this paragraph in consultation with the Director of Central Intelligence and the Secretary of Defense.”.

(C) Section 721 of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104–293; 110 Stat. 3474; 50 U.S.C. 2366) is amended—

(i) in subsection (a), by striking “Not later than” and all that follows through “the Director” and inserting “The Director”;

(ii) by redesignating subsection (b) as subsection (c);

(iii) by inserting after subsection (a) the following new subsection (b):

“(b) SUBMITTAL DATES.—(1) The report required by subsection (a) shall be submitted each year to the congressional intelligence committees and the congressional leadership on a semiannual basis on the dates provided in section 507 of the National Security Act of 1947.

“(2) In this subsection:

“(A) The term ‘congressional intelligence committees’ has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

“(B) The term ‘congressional leadership’ means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.”; and

(iv) in subsection (c), as so redesignated, by striking “The reports” and inserting “Each report”.

(D) Section 308 of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 111 Stat. 2253; 50 U.S.C. 402a note) is amended—

(i) in subsection (a)—

(I) by striking “Not later than” and all that follows through “the Director of Central Intelligence” and inserting “The Director of Central Intelligence”; and

(II) by inserting “on an annual basis” after “to Congress”; and

(ii) by adding at the end the end the following new

subsection (c):

“(c) SUBMITTAL DATE OF REPORT TO LEADERSHIP OF CONGRESSIONAL INTELLIGENCE COMMITTEES.—The date each year for the submittal to the Chairman and Ranking Member of the Permanent Select Committee on Intelligence of the House of Representatives and the Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947.”.

(E) Section 322(a)(6)(D) of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106–567; 114 Stat. 2844; 22 U.S.C. 7302(a)(6)(D)) is amended—

(i) in clause (i), by striking “Beginning on” and inserting “Except as provided in clause (ii), beginning on”;

(ii) by redesignating clause (ii) as clause (iii);

(iii) by inserting after clause (i) the following new clause (ii):

“(ii) SUBMITTAL DATE OF REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of reports required to be submitted under clause (i) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal dates for such reports shall be as provided in section 507 of that Act.”; and

(iv) in clause (iii), as so redesignated, by striking “report” and inserting “reports”.

(6) PUBLIC LAW 103-337.—Section 1012(c) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291-4(c)) is amended—

(A) in paragraph (1), by striking “Not later than” and inserting “Except as provided in paragraph (2), not later than”;

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following new paragraph (2):

“(2) In the case of a report required to be submitted under paragraph (1) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.”

(7) DAVID L. BOREN NATIONAL SECURITY EDUCATION ACT OF 1991.—The David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102-183; 50 U.S.C. 1901 et seq.) is amended—

(A) in section 806(a) (50 U.S.C. 1906(a))—

(i) by inserting “(1)” before “The Secretary”;

(ii) in paragraph (1), as so designated, by striking “the Congress” and inserting “the congressional intelligence committees”;

(iii) by designating the second sentence as paragraph (2) and by aligning such paragraph with the paragraph added by clause (v);

(iv) in paragraph (2), as so designated, by inserting “submitted to the President” after “The report”;

and

(v) by adding at the end the following new paragraph (3):

“(3) The report submitted to the congressional intelligence committees shall be submitted on the date provided in section 507 of the National Security Act of 1947.”; and

(B) in section 808 (50 U.S.C. 1908), by adding at the end the following new paragraph (5):

“(5) The term ‘congressional intelligence committees’ means—

“(A) the Select Committee on Intelligence of the Senate; and

“(B) the Permanent Select Committee on Intelligence of the House of Representatives.”

(8) FAIR CREDIT REPORTING ACT.—(A) Section 604(b)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)) is amended—

(i) in subparagraph (D), by striking “Not later than” and inserting “Except as provided in subparagraph (E), not later than”;

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following new subparagraph (E):

“(E) REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of a report to be submitted under

subparagraph (D) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.”

(B) Section 625(h) of that Act (15 U.S.C. 1681u(h)) is amended—

(i) by inserting “(1)” before “On a semiannual basis.”;

and

(ii) by adding at the end the following new paragraph:

“(2) In the case of the semiannual reports required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947.”

(9) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)) is amended by striking “On a semiannual” and all that follows through “the Senate” and inserting “On the dates provided in section 507 of the National Security Act of 1947, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))”.

## **Subtitle C—Recurring Annual Reports**

### **SEC. 821. ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.**

Section 114 of the National Security Act of 1947, as amended by section 353(b)(6) of this Act, is further amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection (d):

“(d) ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional committees specified in paragraph (3) a report assessing the following:

“(A) The current threat of attack on the United States using ballistic missiles or cruise missiles.

“(B) The current threat of attack on the United States using a chemical, biological, or nuclear weapon delivered by a system other than a ballistic missile or cruise missile.

“(2) Each report under paragraph (1) shall be a national intelligence estimate, or have the formality of a national intelligence estimate.

“(3) The congressional committees referred to in paragraph (1) are the following:

“(A) The congressional intelligence committees.

“(B) The Committees on Foreign Relations and Armed Services of the Senate.

“(C) The Committees on International Relations and Armed Services of the House of Representatives.”

**SEC. 822. ANNUAL REPORT ON COVERT LEASES.**

Section 114 of the National Security Act of 1947, as amended by section 821 of this Act, is further amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

“(e) ANNUAL REPORT ON COVERT LEASES.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees a report on each covert lease of an element of the intelligence community that is in force as of the end of the preceding year.

“(2) Each report under paragraph (1) shall include the following:

“(A) A list of each lease described by that paragraph.

“(B) For each lease—

“(i) the cost of such lease;

“(ii) the duration of such lease;

“(iii) the purpose of such lease; and

“(iv) the directorate or office that controls such lease.”.

**SEC. 823. ANNUAL REPORT ON IMPROVEMENT OF FINANCIAL STATEMENTS OF CERTAIN ELEMENTS OF THE INTELLIGENCE COMMUNITY FOR AUDITING PURPOSES.**

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by inserting after section 114 the following new section:

“ANNUAL REPORT ON IMPROVEMENT OF FINANCIAL STATEMENTS FOR AUDITING PURPOSES

“SEC. 114A. Not later each year than the date provided in section 507, the Director of Central Intelligence, the Director of the National Security Agency, the Director of the Defense Intelligence Agency, and the Director of the National Imagery and Mapping Agency shall each submit to the congressional intelligence committees a report describing the activities being undertaken by such official to ensure that the financial statements of such agency can be audited in accordance with applicable law and requirements of the Office of Management and Budget.”.

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by inserting after the item relating to section 114 the following new item:

“Sec. 114A. Annual report on improvement of financial statements for auditing purposes.”.

**SEC. 824. ANNUAL REPORT ON ACTIVITIES OF FEDERAL BUREAU OF INVESTIGATION PERSONNEL OUTSIDE THE UNITED STATES.**

(a) ANNUAL REPORT.—Chapter 33 of title 28, United States Code, is amended by adding at the end the following new section:

**“§ 540C. Annual report on activities of Federal Bureau of Investigation personnel outside the United States**

“(a) The Director of the Federal Bureau of Investigation shall submit to the appropriate committees of Congress each year a report on the activities of personnel of the Federal Bureau of Investigation outside the United States.

“(b) The report under subsection (a) shall include the following:

“(1) For the year preceding the year in which the report is required to be submitted—

“(A) the number of personnel of the Bureau posted or detailed outside the United States during the year;

“(B) a description of the coordination of the investigations, asset handling, liaison, and operational activities of the Bureau during the year with other elements of the intelligence community; and

“(C) a description of the extent to which information derived from activities described in subparagraph (B) was shared with other elements of the intelligence community.

“(2) For the year in which the report is required to be submitted—

“(A) a description of the plans, if any, of the Director—

“(i) to modify the number of personnel of the Bureau posted or detailed outside the United States; or

“(ii) to modify the scope of the activities of personnel of the Bureau posted or detailed outside the United States; and

“(B) a description of the manner and extent to which information derived from activities of the Bureau described in paragraph (1)(B) during the year will be shared with other elements of the intelligence community.

“(c) The date of the submittal each year of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947.

“(d) In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committees on the Judiciary of the Senate and House of Representatives; and

“(2) the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)).”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 33 of that title is amended by inserting after the item relating to section 540B the following new item:

“540C. Annual report on activities of Federal Bureau of Investigation personnel outside the United States.”

**SEC. 825. ANNUAL REPORTS OF INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY ON PROPOSED RESOURCES AND ACTIVITIES OF THEIR OFFICES.**

Section 8H of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (f), by striking “this section” and inserting “subsections (a) through (e)”;

(2) by redesignating subsection (g) as subsection (h); and

(3) by inserting after subsection (f) the following new subsection (g):

“(g)(1) The Inspector General of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the National Security Agency shall each submit to the congressional intelligence committees each year a report that sets forth the following:

“(A) The personnel and funds requested by such Inspector General for the fiscal year beginning in such year for the ac-

tivities of the office of such Inspector General in such fiscal year.

“(B) The plan of such Inspector General for such activities, including the programs and activities scheduled for review by the office of such Inspector General during such fiscal year.

“(C) An assessment of the current ability of such Inspector General to hire and retain qualified personnel for the office of such Inspector General.

“(D) Any matters that such Inspector General considers appropriate regarding the independence and effectiveness of the office of such Inspector General.

“(2) The submittal date for a report under paragraph (1) each year shall be the date provided in section 507 of the National Security Act of 1947.

“(3) In this subsection, the term ‘congressional intelligence committees’ shall have the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).”.

**SEC. 826. [21 U.S.C. 873 nt] ANNUAL REPORT ON COUNTERDRUG INTELLIGENCE MATTERS.**

(a) ANNUAL REPORT.—The Counterdrug Intelligence Coordinating Group shall submit to the appropriate committees of Congress each year a report on current counterdrug intelligence matters. The report shall include the recommendations of the Counterdrug Intelligence Coordinating Group on the appropriate number of permanent staff, and of detailed personnel, for the staff of the Counterdrug Intelligence Executive Secretariat.

(b) SUBMITTAL DATE.—The date of the submittal each year of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947, as added by section 811 of this Act.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committees on Appropriations of the Senate and House of Representatives; and

(2) the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)).

**SEC. 827. [50 U.S.C. 404n-3] ANNUAL REPORT ON FOREIGN COMPANIES INVOLVED IN THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION THAT RAISE FUNDS IN THE UNITED STATES CAPITAL MARKETS.**

(a) ANNUAL REPORT REQUIRED.—The Director of Central Intelligence shall submit to the appropriate committees of Congress on an annual basis a report setting forth each foreign company described in subsection (b) that raised or attempted to raise funds in the United States capital markets during the preceding year.

(b) COVERED FOREIGN COMPANIES.—A foreign company described in this subsection is any foreign company determined by the Director to be engaged or involved in the proliferation of weapons of mass destruction (including nuclear, biological, or chemical weapons) or the means to deliver such weapons.

(c) SUBMITTAL DATE.—The date each year for the submittal of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947, as added by section 811 of this Act.

(d) **FORM OF REPORTS.**—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(e) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

(1) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives;

(2) the Committees on Armed Services, Banking, Housing, and Urban Affairs, Governmental Affairs, and Foreign Relations of the Senate; and

(3) the Committees on Armed Services, Financial Services, Government Reform, and International Relations of the House of Representatives.

## **Subtitle D—Other Reports**

### **SEC. 831. REPORT ON EFFECT OF COUNTRY-RELEASE RESTRICTIONS ON ALLIED INTELLIGENCE-SHARING RELATIONSHIPS.**

(a) **REPORT.**—Not later than 90 days after the date of the enactment of this Act, the Director of Central Intelligence shall, in consultation with the Secretary of Defense, submit to the congressional intelligence committees a report containing an assessment of the effect of the use of “NOFORN” classifications, and of other country-release policies, procedures, and classification restrictions, on intelligence-sharing relationships and coordinated intelligence operations and military operations between the United States and its allies. The report shall include an assessment of the effect of the use of such classifications, and of such policies, procedures, and restrictions, on counterterrorism operations in Afghanistan and elsewhere.

(b) **CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.**—In this section, the term “congressional intelligence committee” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

### **SEC. 832. [22 U.S.C. 4861 nt] EVALUATION OF POLICIES AND PROCEDURES OF DEPARTMENT OF STATE ON PROTECTION OF CLASSIFIED INFORMATION AT DEPARTMENT HEADQUARTERS.**

(a) **EVALUATION REQUIRED.**—Not later than December 31 of 2002, 2003, and 2004, the Inspector General of the Department of State shall conduct an evaluation of the policies and procedures of the Department on the protection of classified information at the Headquarters of the Department, including compliance with the directives of the Director of Central Intelligence (DCIDs) regarding the storage and handling of Sensitive Compartmented Information (SCI) material.

(b) **ANNUAL REPORT.**—Except as provided in subsection (c), not later than February 1 of 2003, 2004, and 2005, the Inspector General shall submit to the following committees a report on the evaluation conducted under subsection (a) during the preceding year:

(1) The congressional intelligence committees.

(2) The Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(c) EXCEPTION.—The date each year for the submittal of a report under subsection (b) may be postponed in accordance with section 507(d) of the National Security Act of 1947, as added by section 811 of this Act.

(d) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means—

- (1) the Select Committee on Intelligence of the Senate; and
- (2) the Permanent Select Committee on Intelligence of the House of Representatives.

## **Subtitle E—Repeal of Certain Report Requirements**

### **SEC. 841. REPEAL OF CERTAIN REPORT REQUIREMENTS.**

(a) ANNUAL REPORT ON THE DETAIL OF INTELLIGENCE COMMUNITY PERSONNEL.—Section 113 of the National Security Act of 1947 (50 U.S.C. 404h) is amended by striking subsection (c).

(b) ANNUAL REPORT ON EXERCISE OF NATIONAL SECURITY AGENCY VOLUNTARY SEPARATION PAY AUTHORITY.—Section 301(j) of the National Security Act of 1947 (50 U.S.C. 409a(j)), as amended by section 353(b)(2)(A) of this Act, is further amended—

- (1) by striking “REPORTING REQUIREMENTS.—” and all that follows through “The Director may” and inserting “NOTIFICATION OF EXERCISE OF AUTHORITY.—The Director may”; and
- (2) by striking paragraph (2).

(c) ANNUAL REPORT ON TRANSFERS OF AMOUNTS FOR ACQUISITION OF LAND BY THE CENTRAL INTELLIGENCE AGENCY.—Section 5(c)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(c)(2)) is amended by striking “an annual report on the transfers of sums described in paragraph (1).” and inserting “a report on the transfer of sums described in paragraph (1) each time that authority is exercised.”.

(d) ANNUAL REPORT ON USE OF CIA PERSONNEL AS SPECIAL POLICEMEN.—Section 15(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o(a)) is amended by striking paragraph (5).

(e) ANNUAL AUDIT OF THE CENTRAL SERVICES PROGRAM OF THE CENTRAL INTELLIGENCE AGENCY.—Section 21 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u) is amended—

- (1) by striking subsection (g); and
- (2) by redesignating subsection (h) as subsection (g).

(f) ANNUAL REPORT ON SPECIAL POLICE AUTHORITY FOR THE NATIONAL SECURITY AGENCY.—Section 11(a)(5) of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by inserting “through 2004” after “Not later than July 1 each year”.

## TITLE IX—COUNTERINTELLIGENCE ACTIVITIES

### SEC. 901. SHORT TITLE; PURPOSE.

(a) [50 U.S.C. 401 nt] SHORT TITLE.—This title may be cited as the “Counterintelligence Enhancement Act of 2002”.

(b) [50 U.S.C. 402b nt] PURPOSE.—The purpose of this title is to facilitate the enhancement of the counterintelligence activities of the United States Government by—

(1) enabling the counterintelligence community of the United States Government to fulfill better its mission of identifying, assessing, prioritizing, and countering the intelligence threats to the United States;

(2) ensuring that the counterintelligence community of the United States Government acts in an efficient and effective manner; and

(3) providing for the integration of all the counterintelligence activities of the United States Government.

### SEC. 902. [50 U.S.C. 402b] NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) ESTABLISHMENT.—(1) There shall be a National Counterintelligence Executive, who shall be appointed by the President.

(2) It is the sense of Congress that the President should seek the views of the Attorney General, Secretary of Defense, and Director of Central Intelligence in selecting an individual for appointment as the Executive.

(b) MISSION.—The mission of the National Counterintelligence Executive shall be to serve as the head of national counterintelligence for the United States Government.

(c) DUTIES.—Subject to the direction and control of the President, the duties of the National Counterintelligence Executive are as follows:

(1) To carry out the mission referred to in subsection (b).

(2) To act as chairperson of the National Counterintelligence Policy Board under section 811 of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 50 U.S.C. 402a), as amended by section 903 of this Act.

(3) To act as head of the Office of the National Counterintelligence Executive under section 904.

(4) To participate as an observer on such boards, committees, and entities of the executive branch as the President considers appropriate for the discharge of the mission and functions of the Executive and the Office of the National Counterintelligence Executive under section 904.

### SEC. 903. NATIONAL COUNTERINTELLIGENCE POLICY BOARD.

(a) CHAIRPERSON.—Section 811 of the Counterintelligence and Security Enhancements Act of 1994 (title VII of Public Law 103–359; 50 U.S.C. 402a), as amended by section 811(b)(5)(B) of this Act, is further amended—

(1) by striking subsection (b);

(2) by redesignating subsection (c) as subsection (e); and

(3) by inserting after subsection (a) the following new subsection (b):

“(b) CHAIRPERSON.—The National Counterintelligence Executive under section 902 of the Counterintelligence Enhancement Act of 2002 shall serve as the chairperson of the Board.”

(b) MEMBERSHIP.—That section is further amended by inserting after subsection (b), as amended by subsection (a)(3) of this section, the following new subsection (c):

“(c) MEMBERSHIP.—The membership of the National Counterintelligence Policy Board shall consist of the following:

“(1) The National Counterintelligence Executive.

“(2) Senior personnel of departments and elements of the United States Government, appointed by the head of the department or element concerned, as follows:

“(A) The Department of Justice, including the Federal Bureau of Investigation.

“(B) The Department of Defense, including the Joint Chiefs of Staff.

“(C) The Department of State.

“(D) The Department of Energy.

“(E) The Central Intelligence Agency.

“(F) Any other department, agency, or element of the United States Government specified by the President.”

(c) FUNCTIONS AND DISCHARGE OF FUNCTIONS.—That section is further amended by inserting after subsection (c), as amended by subsection (b) of this section, the following new subsection:

“(d) FUNCTIONS AND DISCHARGE OF FUNCTIONS.—(1) The Board shall—

“(A) serve as the principal mechanism for—

“(i) developing policies and procedures for the approval of the President to govern the conduct of counterintelligence activities; and

“(ii) upon the direction of the President, resolving conflicts that arise between elements of the Government conducting such activities; and

“(B) act as an interagency working group to—

“(i) ensure the discussion and review of matters relating to the implementation of the Counterintelligence Enhancement Act of 2002; and

“(ii) provide advice to the National Counterintelligence Executive on priorities in the implementation of the National Counterintelligence Strategy produced by the Office of the National Counterintelligence Executive under section 904(e)(2) of that Act.

“(2) The Board may, for purposes of carrying out its functions under this section, establish such interagency boards and working groups as the Board considers appropriate.”

**SEC. 904. [50 U.S.C. 402c] OFFICE OF THE NATIONAL COUNTERINTELLIGENCE EXECUTIVE.**

(a) ESTABLISHMENT.—There shall be an Office of the National Counterintelligence Executive.

(b) HEAD OF OFFICE.—The National Counterintelligence Executive shall be the head of the Office of the National Counterintelligence Executive.

(c) LOCATION OF OFFICE.—The Office of the National Counterintelligence Executive shall be located in the Office of the Director of Central Intelligence.

(d) GENERAL COUNSEL.—(1) There shall be in the Office of the National Counterintelligence Executive a general counsel who shall serve as principal legal advisor to the National Counterintelligence Executive.

(2) The general counsel shall—

(A) provide legal advice and counsel to the Executive on matters relating to functions of the Office;

(B) ensure that the Office complies with all applicable laws, regulations, Executive orders, and guidelines; and

(C) carry out such other duties as the Executive may specify.

(e) FUNCTIONS.—Subject to the direction and control of the National Counterintelligence Executive, the functions of the Office of the National Counterintelligence Executive shall be as follows:

(1) NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENT.—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, to produce on an annual basis a strategic planning assessment of the counterintelligence requirements of the United States to be known as the National Threat Identification and Prioritization Assessment.

(2) NATIONAL COUNTERINTELLIGENCE STRATEGY.—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, and based on the most current National Threat Identification and Prioritization Assessment under paragraph (1), to produce on an annual basis a strategy for the counterintelligence programs and activities of the United States Government to be known as the National Counterintelligence Strategy.

(3) IMPLEMENTATION OF NATIONAL COUNTERINTELLIGENCE STRATEGY.—To evaluate on an ongoing basis the implementation of the National Counterintelligence Strategy and to submit to the President periodic reports on such evaluation, including a discussion of any shortfalls in the implementation of the Strategy and recommendations for remedies for such shortfalls.

(4) NATIONAL COUNTERINTELLIGENCE STRATEGIC ANALYSES.—As directed by the Director of Central Intelligence and in consultation with appropriate elements of the departments and agencies of the United States Government, to oversee and coordinate the production of strategic analyses of counterintelligence matters, including the production of counterintelligence damage assessments and assessments of lessons learned from counterintelligence activities.

(5) NATIONAL COUNTERINTELLIGENCE PROGRAM BUDGET.—In consultation with the Director of Central Intelligence—

(A) to coordinate the development of budgets and resource allocation plans for the counterintelligence programs and activities of the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence

Agency, and other appropriate elements of the United States Government;

(B) to ensure that the budgets and resource allocation plans developed under subparagraph (A) address the objectives and priorities for counterintelligence under the National Counterintelligence Strategy; and

(C) to submit to the National Security Council periodic reports on the activities undertaken by the Office under subparagraphs (A) and (B).

(6) NATIONAL COUNTERINTELLIGENCE COLLECTION AND TARGETING COORDINATION.—To develop priorities for counterintelligence investigations and operations, and for collection of counterintelligence, for purposes of the National Counterintelligence Strategy, except that the Office may not—

(A) carry out any counterintelligence investigations or operations; or

(B) establish its own contacts, or carry out its own activities, with foreign intelligence services.

(7) NATIONAL COUNTERINTELLIGENCE OUTREACH, WATCH, AND WARNING.—

(A) COUNTERINTELLIGENCE VULNERABILITY SURVEYS.—

To carry out and coordinate surveys of the vulnerability of the United States Government, and the private sector, to intelligence threats in order to identify the areas, programs, and activities that require protection from such threats.

(B) OUTREACH.—To carry out and coordinate outreach programs and activities on counterintelligence to other elements of the United States Government, and the private sector, and to coordinate the dissemination to the public of warnings on intelligence threats to the United States.

(C) RESEARCH AND DEVELOPMENT.—To ensure that research and development programs and activities of the United States Government, and the private sector, direct attention to the needs of the counterintelligence community for technologies, products, and services.

(D) TRAINING AND PROFESSIONAL DEVELOPMENT.—To develop policies and standards for training and professional development of individuals engaged in counterintelligence activities and to manage the conduct of joint training exercises for such personnel.

(f) ADDITIONAL REQUIREMENTS REGARDING NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENT AND NATIONAL COUNTERINTELLIGENCE STRATEGY.—(1) A National Threat Identification and Prioritization Assessment under subsection (e)(1), and any modification of such assessment, shall not go into effect until approved by the President.

(2) A National Counterintelligence Strategy under subsection (e)(2), and any modification of such strategy, shall not go into effect until approved by the President.

(3) The National Counterintelligence Executive shall submit to the congressional intelligence committees each National Threat Identification and Prioritization Assessment, or modification thereof, and each National Counterintelligence Strategy, or modification thereof, approved under this section.

(4) In this subsection, the term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate;  
and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(g) PERSONNEL.—(1) Personnel of the Office of the National Counterintelligence Executive may consist of personnel employed by the Office or personnel on detail from any other department, agency, or element of the Federal Government. Any such detail may be on a reimbursable or nonreimbursable basis, at the election of the head of the agency detailing such personnel.

(2) Notwithstanding section 104(d) or any other provision of law limiting the period of the detail of personnel on a nonreimbursable basis, the detail of an officer or employee of United States or a member of the Armed Forces under paragraph (1) on a nonreimbursable basis may be for any period in excess of one year that the National Counterintelligence Executive and the head of the department, agency, or element concerned consider appropriate.

(3) The employment of personnel by the Office, including the appointment, compensation and benefits, management, and separation of such personnel, shall be governed by the provisions of law on such matters with respect to the personnel of the Central Intelligence Agency, except that, for purposes of the applicability of such provisions of law to personnel of the Office, the National Counterintelligence Executive shall be treated as the head of the Office.

(4) Positions in the Office shall be excepted service positions for purposes of title 5, United States Code.

(h) SUPPORT.—(1) The Attorney General, Secretary of Defense, and Director of Central Intelligence may each provide the Office of the National Counterintelligence Executive such support as may be necessary to permit the Office to carry out its functions under this section.

(2) Subject to any terms and conditions specified by the Director of Central Intelligence, the Director may provide administrative and contract support to the Office as if the Office were an element of the Central Intelligence Agency.

(3) Support provided under this subsection may be provided on a reimbursable or nonreimbursable basis, at the election of the official providing such support.

(i) AVAILABILITY OF FUNDS FOR REIMBURSEMENT.—The National Counterintelligence Executive may, from amounts available for the Office, transfer to a department or agency detailing personnel under subsection (g), or providing support under subsection (h), on a reimbursable basis amounts appropriate to reimburse such department or agency for the detail of such personnel or the provision of such support, as the case may be.

(j) CONTRACTS.—(1) Subject to paragraph (2), the National Counterintelligence Executive may enter into any contract, lease, cooperative agreement, or other transaction that the Executive considers appropriate to carry out the functions of the Office of the National Counterintelligence Executive under this section.

(2) The authority under paragraph (1) to enter into contracts, leases, cooperative agreements, and other transactions shall be subject to any terms, conditions, and limitations applicable to the

Central Intelligence Agency under law with respect to similar contracts, leases, cooperative agreements, and other transactions.

(k) TREATMENT OF ACTIVITIES UNDER CERTAIN ADMINISTRATIVE LAWS.—The files of the Office shall be treated as operational files of the Central Intelligence Agency for purposes of section 701 of the National Security Act of 1947 (50 U.S.C. 431) to the extent such files meet criteria under subsection (b) of that section for treatment of files as operational files of an element of the Agency.

(l) OVERSIGHT BY CONGRESS.—The location of the Office of the National Counterintelligence Executive within the Office of the Director of Central Intelligence shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office; or

(2) any personnel of the Office.

(m) CONSTRUCTION.—Nothing in this section shall be construed as affecting the authority of the Director of Central Intelligence, the Secretary of Defense, the Secretary of State, the Attorney General, or the Director of the Federal Bureau of Investigation as provided or specified under the National Security Act of 1947 or under other provisions of law.

## **TITLE X—NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY**

### **SEC. 1001. [50 U.S.C. 401 nt] FINDINGS.**

Congress makes the following findings:

(1) Research and development efforts under the purview of the intelligence community are vitally important to the national security of the United States.

(2) The intelligence community must operate in a dynamic, highly-challenging environment, characterized by rapid technological growth, against a growing number of hostile, technically-sophisticated threats. Research and development programs under the purview of the intelligence community are critical to ensuring that intelligence agencies, and their personnel, are provided with important technological capabilities to detect, characterize, assess, and ultimately counter the full range of threats to the national security of the United States.

(3) There is a need to review the full range of current research and development programs under the purview of the intelligence community, evaluate such programs against the scientific and technological fields judged to be of most importance, and articulate program and resource priorities for future research and development activities to ensure a unified and coherent research and development program across the entire intelligence community.

**SEC. 1002. [50 U.S.C. 401 nt] NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.**

(a) **ESTABLISHMENT.**—There is established a commission to be known as the “National Commission for the Review of the Research and Development Programs of the United States Intelligence Community” (in this title referred to as the “Commission”).

(b) **COMPOSITION.**—The Commission shall be composed of 12 members, as follows:

(1) The Deputy Director of Central Intelligence for Community Management.

(2) A senior intelligence official of the Office of the Secretary of Defense, as designated by the Secretary of Defense.

(3) Three members appointed by the majority leader of the Senate, in consultation with the Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and two from private life.

(4) Two members appointed by the minority leader of the Senate, in consultation with the Vice Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and one from private life.

(5) Three members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and two from private life.

(6) Two members appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and one from private life.

(c) **MEMBERSHIP.**—(1) The individuals appointed from private life as members of the Commission shall be individuals who are nationally recognized for expertise, knowledge, or experience in—

(A) research and development programs;

(B) technology discovery and insertion;

(C) use of intelligence information by national policymakers and military leaders; or

(D) the implementation, funding, or oversight of the national security policies of the United States.

(2) An official who appoints members of the Commission may not appoint an individual as a member of the Commission if, in the judgment of the official, such individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

(3) All members of the Commission appointed from private life shall possess an appropriate security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(d) **CO-CHAIRS.**—(1) The Commission shall have two co-chairs, selected from among the members of the Commission.

(2) One co-chair of the Commission shall be a member of the Democratic Party, and one co-chair shall be a member of the Republican Party.

(3) The individuals who serve as the co-chairs of the Commission shall be jointly agreed upon by the President, the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives.

(e) APPOINTMENT; INITIAL MEETING.—(1) Members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act.

(2) The Commission shall hold its initial meeting on the date that is 60 days after the date of the enactment of this Act.

(f) MEETINGS; QUORUM; VACANCIES.—(1) After its initial meeting, the Commission shall meet upon the call of the co-chairs of the Commission.

(2) Six members of the Commission shall constitute a quorum for purposes of conducting business, except that two members of the Commission shall constitute a quorum for purposes of receiving testimony.

(3) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) If vacancies in the Commission occur on any day after 45 days after the date of the enactment of this Act, a quorum shall consist of a majority of the members of the Commission as of such day.

(g) ACTIONS OF COMMISSION.—(1) The Commission shall act by resolution agreed to by a majority of the members of the Commission voting and present.

(2) The Commission may establish panels composed of less than the full membership of the Commission for purposes of carrying out the duties of the Commission under this title. The actions of any 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.

(3) Any member, agent, or staff of the Commission may, if authorized by the co-chairs of the Commission, take any action which the Commission is authorized to take pursuant to this title.

(h) DUTIES.—The duties of the Commission shall be—

(1) to conduct, until not later than the date on which the Commission submits the report under section 1007(a), the review described in subsection (i); and

(2) to submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report on the results of the review.

(i) REVIEW.—The Commission shall review the status of research and development programs and activities within the intelligence community, including—

(1) an assessment of the advisability of modifying the scope of research and development for purposes of such programs and activities;

(2) a review of the particular individual research and development activities under such programs;

(3) an evaluation of the current allocation of resources for research and development, including whether the allocation of such resources for that purpose should be modified;

(4) an identification of the scientific and technological fields judged to be of most importance to the intelligence community;

(5) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of other departments and agencies of the Federal Government; and

(6) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of the private sector.

**SEC. 1003. [50 U.S.C. 401 nt] POWERS OF COMMISSION.**

(a) IN GENERAL.—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member considers necessary.

(2) Subpoenas may be issued under subparagraph (1)(B) under the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs.

(3) The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of a witness to comply with any subpoena or to testify when summoned under authority of this section.

(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, agency, bureau, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request of the co-chairs of the Commission. The Commission shall handle and protect all classified information provided to it under this section in accordance with applicable statutes and regulations.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—(1) The Director of Central Intelligence shall provide to the Commission, on a non-reimbursable basis, such administrative services, funds, staff, facilities, and other support services as are necessary for the performance of the Commission's duties under this title.

(2) The Secretary of Defense may provide the Commission, on a nonreimbursable basis, with such administrative services, staff, and other support services as the Commission may request.

(3) In addition to the assistance set forth in paragraphs (1) and (2), other departments and agencies of the United States may provide the Commission such services, funds, facilities, staff, and other support as such departments and agencies consider advisable and as may be authorized by law.

(4) The Commission shall receive the full and timely cooperation of any official, department, or agency of the United States Government whose assistance is necessary for the fulfillment of the duties of the Commission under this title, including the provision of full and current briefings and analyses.

(e) PROHIBITION ON WITHHOLDING INFORMATION.—No department or agency of the Government may withhold information from the Commission on the grounds that providing the information to the Commission would constitute the unauthorized disclosure of classified information or information relating to intelligence sources or methods.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(g) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property in carrying out its duties under this title.

**SEC. 1004. [50 U.S.C. 401 nt] STAFF OF COMMISSION.**

(a) IN GENERAL.—(1) The co-chairs of the Commission, in accordance with rules agreed upon by the Commission, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.

(2) Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) All staff of the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(b) CONSULTANT SERVICES.—(1) The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(2) All experts and consultants employed by the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

**SEC. 1005. [50 U.S.C. 401 nt] COMPENSATION AND TRAVEL EXPENSES.**

(a) **COMPENSATION.**—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission under this title.

(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay by reason of their service on the Commission.

(b) **TRAVEL EXPENSES.**—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

**SEC. 1006. [50 U.S.C. 401 nt] TREATMENT OF INFORMATION RELATING TO NATIONAL SECURITY.**

(a) **IN GENERAL.**—(1) The Director of Central Intelligence shall assume responsibility for the handling and disposition of any information related to the national security of the United States that is received, considered, or used by the Commission under this title.

(2) Any information related to the national security of the United States that is provided to the Commission by a congressional intelligence committee may not be further provided or released without the approval of the chairman of such committee.

(b) **ACCESS AFTER TERMINATION OF COMMISSION.**—Notwithstanding any other provision of law, after the termination of the Commission under section 1007, only the Members and designated staff of the congressional intelligence committees, the Director of Central Intelligence (and the designees of the Director), and such other officials of the executive branch as the President may designate shall have access to information related to the national security of the United States that is received, considered, or used by the Commission.

**SEC. 1007. [50 U.S.C. 401 nt] FINAL REPORT; TERMINATION.**

(a) **FINAL REPORT.**—Not later than September 1, 2003, the Commission shall submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report as required by section 1002(h)(2).

(b) **TERMINATION.**—(1) The Commission, and all the authorities of this title, shall terminate at the end of the 120-day period beginning on the date on which the final report under subsection (a) is transmitted to the congressional intelligence committees.

(2) The Commission may use the 120-day period referred to in paragraph (1) for the purposes of concluding its activities, including providing testimony to Congress concerning the final report referred to in that paragraph and disseminating the report.

**SEC. 1008. [50 U.S.C. 401 nt] ASSESSMENTS OF FINAL REPORT.**

Not later than 60 days after receipt of the final report under section 1007(a), the Director of Central Intelligence and the Secretary of Defense shall each submit to the congressional intel-

ligence committees an assessment by the Director or the Secretary, as the case may be, of the final report. Each assessment shall include such comments on the findings and recommendations contained in the final report as the Director or Secretary, as the case may be, considers appropriate.

**SEC. 1009. [50 U.S.C. 401 nt] INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.**

(a) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission under this title.

(b) FREEDOM OF INFORMATION ACT.—The provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), shall not apply to the activities, records, and proceedings of the Commission under this title.

**SEC. 1010. [50 U.S.C. 401 nt] FUNDING.**

(a) TRANSFER FROM THE COMMUNITY MANAGEMENT ACCOUNT.—Of the amounts authorized to be appropriated by this Act for the Intelligence Technology Innovation Center of the Community Management Account, the Deputy Director of Central Intelligence for Community Management shall transfer to the Director of Central Intelligence \$2,000,000 for purposes of the activities of the Commission under this title.

(b) AVAILABILITY IN GENERAL.—The Director of Central Intelligence shall make available to the Commission, from the amount transferred to the Director under subsection (a), such amounts as the Commission may require for purposes of the activities of the Commission under this title.

(c) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (b) shall remain available until expended.

**SEC. 1011. [50 U.S.C. 401 nt] DEFINITIONS.**

In this title:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate;

and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).



## **INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2002**

(Public Law 107–108; 115 Stat. 1394; approved December 28, 2001)

AN ACT To authorize appropriations for fiscal year 2002 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—INTELLIGENCE ACTIVITIES

- Sec. 101. Authorization of appropriations.
- Sec. 102. Classified schedule of authorizations.
- Sec. 103. Personnel ceiling adjustments.
- Sec. 104. Intelligence Community Management Account.
- Sec. 105. Codification of the Coast Guard as an element of the intelligence community.

#### TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

- Sec. 201. Authorization of appropriations.

#### TITLE III—GENERAL PROVISIONS

- Sec. 301. Increase in employee compensation and benefits authorized by law.
- Sec. 302. Restriction on conduct of intelligence activities.
- Sec. 303. Sense of Congress on intelligence community contracting.
- Sec. 304. Requirements for lodging allowances in intelligence community assignment program benefits.
- Sec. 305. Modification of reporting requirements for significant anticipated intelligence activities and significant intelligence failures.
- Sec. 306. Report on implementation of recommendations of the National Commission on Terrorism and other entities.
- Sec. 307. Judicial review under Foreign Narcotics Kingpin Designation Act.
- Sec. 308. Modification of positions requiring consultation with Director of Central Intelligence in appointments.
- Sec. 309. Modification of authorities for protection of intelligence community employees who report urgent concerns to Congress.
- Sec. 310. Review of protections against the unauthorized disclosure of classified information.
- Sec. 311. One-year suspension of reorganization of Diplomatic Telecommunications Service Program Office.
- Sec. 312. Presidential approval and submission to Congress of National Counterintelligence Strategy and National Threat Identification and Prioritization Assessments.
- Sec. 313. Report on alien terrorist removal proceedings.
- Sec. 314. Technical amendments.

## TITLE IV—CENTRAL INTELLIGENCE AGENCY

- Sec. 401. Modifications of central services program.  
Sec. 402. One-year extension of Central Intelligence Agency Voluntary Separation Pay Act.  
Sec. 403. Guidelines for recruitment of certain foreign assets.  
Sec. 404. Full reimbursement for professional liability insurance of counterterrorism employees.

## TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

- Sec. 501. Authority to purchase items of nominal value for recruitment purposes.  
Sec. 502. Funding for infrastructure and quality-of-life improvements at Menwith Hill and Bad Aibling stations.  
Sec. 503. Modification of authorities relating to official immunity in interdiction of aircraft engaged in illicit drug trafficking.  
Sec. 504. Undergraduate training program for employees of the National Imagery and Mapping Agency.  
Sec. 505. Preparation and submittal of reports, reviews, studies, and plans relating to Department of Defense intelligence activities.  
Sec. 506. Enhancement of security authorities of National Security Agency.

**TITLE I—INTELLIGENCE ACTIVITIES****SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for fiscal year 2002 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Central Intelligence Agency.
- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.
- (10) The National Reconnaissance Office.
- (11) The National Imagery and Mapping Agency.
- (12) The Coast Guard.

**SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2002, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill H.R. 2883 of the One Hundred Seventh Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

**SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian per-

sonnel in excess of the number authorized for fiscal year 2002 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall notify promptly the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever the Director exercises the authority granted by this section.

**SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Community Management Account of the Director of Central Intelligence for fiscal year 2002 the sum of \$200,276,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for the advanced research and development committee shall remain available until September 30, 2003.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 343 full-time personnel as of September 30, 2002. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2002 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts shall remain available until September 30, 2003.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2002, there are hereby authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2002 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) **[28 U.S.C. 873 note] NATIONAL DRUG INTELLIGENCE CENTER.**—

(1) **IN GENERAL.**—Of the amount authorized to be appropriated in subsection (a), \$44,000,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2003, and funds provided for procurement purposes shall remain available until September 30, 2004.

(2) **TRANSFER OF FUNDS.**—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) **LIMITATION.**—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) **AUTHORITY.**—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

**SEC. 105. CODIFICATION OF THE COAST GUARD AS AN ELEMENT OF THE INTELLIGENCE COMMUNITY.**

Section 105 amended section 3(4)(H) of the National Security Act of 1947 (50 U.S.C. 401a(4)(H)).

## **TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM**

**SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2002 the sum of \$212,000,000.

## **TITLE III—GENERAL PROVISIONS**

**SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.**

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

**SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.**

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

**SEC. 303. SENSE OF CONGRESS ON INTELLIGENCE COMMUNITY CONTRACTING.**

It is the sense of Congress that the Director of Central Intelligence should continue to direct that elements of the intelligence

community, whenever compatible with the national security interests of the United States and consistent with operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, should competitively award contracts in a manner that maximizes the procurement of products properly designated as having been made in the United States.

**SEC. 304. REQUIREMENTS FOR LODGING ALLOWANCES IN INTELLIGENCE COMMUNITY ASSIGNMENT PROGRAM BENEFITS.**

[Section 304 amended section 113(b) of the National Security Act of 1947 (50 U.S.C. 404h(b)).]

**SEC. 305. MODIFICATION OF REPORTING REQUIREMENTS FOR SIGNIFICANT ANTICIPATED INTELLIGENCE ACTIVITIES AND SIGNIFICANT INTELLIGENCE FAILURES.**

[Section 305 amended section 502 of the National Security Act of 1947 (50 U.S.C. 413a).]

**SEC. 306. REPORT ON IMPLEMENTATION OF RECOMMENDATIONS OF THE NATIONAL COMMISSION ON TERRORISM AND OTHER ENTITIES.**

(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Director of Central Intelligence shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report concerning whether, and to what extent, the Intelligence Community has implemented recommendations relevant to the Intelligence Community as set forth in the following:

(1) The report prepared by the National Commission on Terrorism established by section 591 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277).

(2) The report prepared by the United States Commission on National Security for the 21st Century, Phase III, dated February 15, 2001.

(3) The second annual report of the advisory panel to assess domestic response capabilities for terrorism involving weapons of mass destruction established pursuant to section 1405 of the National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 50 U.S.C. 2301 note).

(b) RECOMMENDATIONS DETERMINED NOT TO BE ADOPTED.—In a case in which the Director determines that a recommendation described in subsection (a) has not been implemented, the report under that subsection shall include a detailed explanation of the reasons for not implementing that recommendation.

**SEC. 307. JUDICIAL REVIEW UNDER FOREIGN NARCOTICS KINGPIN DESIGNATION ACT.**

[Section 307 amended section 805 of the Foreign Narcotics Kingpin Designation Act (title VIII of Public Law 106-120; 113 Stat. 1629; 21 U.S.C. 1904).]

**SEC. 308. MODIFICATION OF POSITIONS REQUIRING CONSULTATION WITH DIRECTOR OF CENTRAL INTELLIGENCE IN APPOINTMENTS.**

Section 308 amended section 106(b)(2) of the National Security Act of 1947 (50 U.S.C. 403-6(b)(2)).

**SEC. 309. MODIFICATION OF AUTHORITIES FOR PROTECTION OF INTELLIGENCE COMMUNITY EMPLOYEES WHO REPORT URGENT CONCERNS TO CONGRESS.**

(a) **AUTHORITY OF INSPECTOR GENERAL OF CENTRAL INTELLIGENCE AGENCY.**—[Section 309(a) amended section 17(d)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(5)).]

(b) **AUTHORITIES OF INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY.**—Section 309(b) amended section 8H of the Inspector General Act of 1978 (5 U.S.C. App.).

**SEC. 310. REVIEW OF PROTECTIONS AGAINST THE UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION.**

(a) **REQUIREMENT.**—The Attorney General shall, in consultation with the Secretary of Defense, Secretary of State, Secretary of Energy, Director of Central Intelligence, and heads of such other departments, agencies, and entities of the United States Government as the Attorney General considers appropriate, carry out a comprehensive review of current protections against the unauthorized disclosure of classified information, including—

(1) any mechanisms available under civil or criminal law, or under regulation, to detect the unauthorized disclosure of such information; and

(2) any sanctions available under civil or criminal law, or under regulation, to deter and punish the unauthorized disclosure of such information.

(b) **PARTICULAR CONSIDERATIONS.**—In carrying out the review required by subsection (a), the Attorney General shall consider, in particular—

(1) whether the administrative regulations and practices of the intelligence community are adequate, in light of the particular requirements of the intelligence community, to protect against the unauthorized disclosure of classified information; and

(2) whether recent developments in technology, and anticipated developments in technology, necessitate particular modifications of current protections against the unauthorized disclosure of classified information in order to further protect against the unauthorized disclosure of such information.

(c) **REPORT.**—(1) Not later than May 1, 2002, the Attorney General shall submit to Congress a report on the review carried out under subsection (a). The report shall include the following:

(A) A comprehensive description of the review, including the findings of the Attorney General as a result of the review.

(B) An assessment of the efficacy and adequacy of current laws and regulations against the unauthorized disclosure of classified information, including whether or not modifications of such laws or regulations, or additional laws or regulations, are advisable in order to further protect against the unauthorized disclosure of such information.

(C) Any recommendations for legislative or administrative action that the Attorney General considers appropriate, including a proposed draft for any such action, and a comprehensive analysis of the Constitutional and legal ramifications of any such action.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

**SEC. 311. [22 U.S.C. 7301 note] TWO-YEAR SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.**

Notwithstanding any provision of subtitle B of title III of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106-567; 114 Stat. 2843; 22 U.S.C. 7301 et seq.), relating to the reorganization of the Diplomatic Telecommunications Service Program Office, no provision of that subtitle shall be effective during the period beginning on the date of the enactment of this Act and ending on October 1, 2003.

**SEC. 312. PRESIDENTIAL APPROVAL AND SUBMISSION TO CONGRESS OF NATIONAL COUNTERINTELLIGENCE STRATEGY AND NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENTS.**

The National Counterintelligence Strategy, and each National Threat Identification and Prioritization Assessment, produced under Presidential Decision Directive 75, dated December 28, 2000, entitled “U.S. Counterintelligence Effectiveness—Counterintelligence for the 21st Century”, including any modification of that Strategy or any such Assessment, may only take effect if approved by the President. The Strategy, each Assessment, and any modification thereof, shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

**SEC. 313. REPORT ON ALIEN TERRORIST REMOVAL PROCEEDINGS.**

[Section 313 amended section 504 of the Immigration and Nationality Act (8 U.S.C. 1534).]

**SEC. 314. TECHNICAL AMENDMENTS.**

(a) FISA.—[Section 314(a) amended the Foreign Intelligence Surveillance Act of 1978 in the following sections: 101(h)(4) (50 U.S.C. 1801(h)(4)), 105 (50 U.S.C. 1805), 301(4)(D) (50 U.S.C. 1821(4)(D)), 304(e) (50 U.S.C. 1824(e)), 402 (50 U.S.C. 1842), 501(a) (50 U.S.C. 1861(a)), 502 (50 U.S.C. 1862), and the table of contents.]

(b) TITLE 18, UNITED STATES CODE.—[Section 314(b) amended section 2510(19) of title 18, United States Code.]

(c) USA PATRIOT ACT.—[Section 314(c) amended sections 207(b)(1) and 1003 of the USA Patriot Act (Public Law 107-56).]

## **TITLE IV—CENTRAL INTELLIGENCE AGENCY**

**SEC. 401. MODIFICATIONS OF CENTRAL SERVICES PROGRAM.**

(a) ANNUAL AUDITS.—[Section 401(a) amended section 21(g)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u).]

(b) PERMANENT AUTHORITY.—[Section 401(b) amended section 21(h) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u).]

**SEC. 402. ONE-YEAR EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION PAY ACT.**

[Section 402 amended subsections (f) and (i) of section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403-4 note).]

**SEC. 403. GUIDELINES FOR RECRUITMENT OF CERTAIN FOREIGN ASSETS.**

Recognizing dissatisfaction with the provisions of the guidelines of the Central Intelligence Agency (promulgated in 1995) for handling cases involving foreign assets or sources with human rights concerns and recognizing that, although there have been recent modifications to those guidelines, they do not fully address the challenges of both existing and long-term threats to United States security, the Director of Central Intelligence shall—

- (1) rescind the existing guidelines for handling such cases;
- (2) issue new guidelines that more appropriately weigh and incentivize risks to ensure that qualified field intelligence officers can, and should, swiftly and directly gather intelligence from human sources in such a fashion as to ensure the ability to provide timely information that would allow for indications and warnings of plans and intentions of hostile actions or events; and
- (3) ensure that such information is shared in a broad and expeditious fashion so that, to the extent possible, actions to protect American lives and interests can be taken.

**SEC. 404. FULL REIMBURSEMENT FOR PROFESSIONAL LIABILITY INSURANCE OF COUNTERTERRORISM EMPLOYEES.**

[Section 404 amended section 406(a)(2) of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106–567; 114 Stat. 2849; 5 U.S.C. prec. 5941 note).]

## **TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

**SEC. 501. AUTHORITY TO PURCHASE ITEMS OF NOMINAL VALUE FOR RECRUITMENT PURPOSES.**

(a) **AUTHORITY.**—[Section 501 amended section 422 of title 10, United States Code.]

**SEC. 502. FUNDING FOR INFRASTRUCTURE AND QUALITY-OF-LIFE IMPROVEMENTS AT MENWITH HILL AND BAD AIBLING STATIONS.**

(a) **AUTHORITY.**—

(1) In addition to funds otherwise available for such purpose, the Secretaries of the Army, Navy, and Air Force may each transfer or reprogram such funds as are necessary—

(A) for the enhancement of the capabilities of the Menwith Hill Station and Bad Aibling Station, including improvements of facility infrastructure and quality of life programs at those installations; and

(B) at the appropriate time, for costs associated with the closure of the Bad Aibling Station.

(2) The authority provided in paragraph (1) may be exercised notwithstanding any other provision of law.

(b) **SOURCE OF FUNDS.**—Funds available for any of the military departments for operation and maintenance shall be available to carry out subsection (a).

(c) **BUDGET REPORT.**—The Secretary of each military department shall ensure—

(1) that the annual budget request of that military department reflects any funds transferred or reprogrammed under this section for the preceding fiscal year; and

(2) that a copy of the portion of the budget request showing each such transfer or reprogramming is transmitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(d) **STATUTORY CONSTRUCTION.**—Nothing in this section may be construed to modify or obviate existing law or practice with regard to the transfer or reprogramming of funds from the Department of the Army, the Department of the Navy, or the Department of the Air Force to the Menwith Hill Station at the Bad Aibling Station.

**SEC. 503. MODIFICATION OF AUTHORITIES RELATING TO OFFICIAL IMMUNITY IN INTERDICTION OF AIRCRAFT ENGAGED IN ILLICIT DRUG TRAFFICKING.**

(a) **CERTIFICATION REQUIRED FOR IMMUNITY.**—[Section 503 amended section 1012 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 22 U.S.C. 2291-4).]

**SEC. 504. UNDERGRADUATE TRAINING PROGRAM FOR EMPLOYEES OF THE NATIONAL IMAGERY AND MAPPING AGENCY.**

(a) **AUTHORITY TO CARRY OUT TRAINING PROGRAM.**—[Section 504 added section 462 to subchapter III of chapter 22 of title 10, United States Code.]

**SEC. 505. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES.**

(a) **CONSULTATION IN PREPARATION.**—The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations or a classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense shall be prepared or conducted in consultation with the Secretary of Defense or an appropriate official of the Department designated by the Secretary for that purpose.

(b) **SUBMITTAL.**—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

(1) The Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.

**SEC. 506. ENHANCEMENT OF SECURITY AUTHORITIES OF NATIONAL SECURITY AGENCY.**

[Section 506 amended section 11 of the National Security Agency Act of 1959 (50 U.S.C. 402 note).]



**INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 2001**

(Public Law 106–567; 114 Stat. 2831; approved December 27, 2000)

AN ACT To authorize appropriations for fiscal year 2001 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 2001”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

- Sec. 101. Authorization of appropriations.
- Sec. 102. Classified schedule of authorizations.
- Sec. 103. Personnel ceiling adjustments.
- Sec. 104. Community management account.
- Sec. 105. Transfer authority of the Director of Central Intelligence.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND  
DISABILITY SYSTEM

- Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

Subtitle A—Intelligence Community

- Sec. 301. Increase in employee compensation and benefits authorized by law.
- Sec. 302. Restriction on conduct of intelligence activities.
- Sec. 303. Sense of the Congress on intelligence community contracting.
- Sec. 304. National Security Agency voluntary separation.
- Sec. 305. Authorization for travel on any common carrier for certain intelligence collection personnel.
- Sec. 306. Update of report on effects of foreign espionage on United States trade secrets.
- Sec. 307. POW/MIA analytic capability within the intelligence community.
- Sec. 308. Applicability to lawful United States intelligence activities of Federal laws implementing international treaties and agreements.
- Sec. 309. Limitation on handling, retention, and storage of certain classified materials by the Department of State.
- Sec. 310. Designation of Daniel Patrick Moynihan Place.

Subtitle B—Diplomatic Telecommunications Service Program Office (DTS-PO)

- Sec. 321. Reorganization of Diplomatic Telecommunications Service Program Office.
- Sec. 322. Personnel.
- Sec. 323. Diplomatic Telecommunications Service Oversight Board.
- Sec. 324. General provisions.

## TITLE IV—CENTRAL INTELLIGENCE AGENCY

- Sec. 401. Modifications to Central Intelligence Agency's central services program.
- Sec. 402. Technical corrections.
- Sec. 403. Expansion of Inspector General actions requiring a report to Congress.
- Sec. 404. Detail of employees to the National Reconnaissance Office.
- Sec. 405. Transfers of funds to other agencies for acquisition of land.
- Sec. 406. Eligibility of additional employees for reimbursement for professional liability insurance.

## TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

- Sec. 501. Role of Director of Central Intelligence in experimental personnel program for certain scientific and technical personnel.
- Sec. 502. Measurement and signature intelligence.

## TITLE VI—COUNTERINTELLIGENCE MATTERS

- Sec. 601. Short title.
- Sec. 602. Orders for electronic surveillance under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 603. Orders for physical searches under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 604. Disclosure of information acquired under the Foreign Intelligence Surveillance Act of 1978 for law enforcement purposes.
- Sec. 605. Coordination of counterintelligence with the Federal Bureau of Investigation.
- Sec. 606. Enhancing protection of national security at the Department of Justice.
- Sec. 607. Coordination requirements relating to the prosecution of cases involving classified information.
- Sec. 608. Severability.

## TITLE VII—DECLASSIFICATION OF INFORMATION

- Sec. 701. Short title.
- Sec. 702. Findings.
- Sec. 703. Public Interest Declassification Board.
- Sec. 704. Identification, collection, and review for declassification of information of archival value or extraordinary public interest.
- Sec. 705. Protection of national security information and other information.
- Sec. 706. Standards and procedures.
- Sec. 707. Judicial review.
- Sec. 708. Funding.
- Sec. 709. Definitions.
- Sec. 710. Sunset.

## TITLE VIII—DISCLOSURE OF INFORMATION ON JAPANESE IMPERIAL GOVERNMENT

- Sec. 801. Short title.
- Sec. 802. Designation.
- Sec. 803. Requirement of disclosure of records.
- Sec. 804. Expedited processing of requests for Japanese Imperial Government records.
- Sec. 805. Effective date.

**TITLE I—INTELLIGENCE ACTIVITIES****SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for fiscal year 2001 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Central Intelligence Agency.
- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.
- (10) The National Reconnaissance Office.
- (11) The National Imagery and Mapping Agency.

**SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2001, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill H.R. 4392 of the One Hundred Sixth Congress (House Report 106-969).

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

**SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2001 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever the Director exercises the authority granted by this section.

**SEC. 104. COMMUNITY MANAGEMENT ACCOUNT.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Community Management Account of the Director of Central Intelligence for fiscal year 2001 the sum of \$163,231,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for the Advanced Research and Development Committee shall remain available until September 30, 2002.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Community Management Account of the Director of Central Intelligence are authorized 313 full-time personnel as of September 30, 2001. Personnel serving in such elements may be permanent employees of the Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Community Management Account by subsection (a), there are also authorized to be appropriated for the Community Management Account for fiscal year 2001 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts shall remain available until September 30, 2002.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Community Management Account as of September 30, 2001, there are hereby authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2001, any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a non-reimbursable basis for a period of less than 1 year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) [21 U.S.C. 873 note] NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), \$34,100,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, test, and evaluation purposes shall remain available until September 30, 2002, and funds provided for procurement purposes shall remain available until September 30, 2003.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403-3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

**SEC. 105. TRANSFER AUTHORITY OF THE DIRECTOR OF CENTRAL INTELLIGENCE.**

(a) LIMITATION ON DELEGATION OF AUTHORITY OF DEPARTMENTS TO OBJECT TO TRANSFERS.—[Section 105(a) amended section 104(d)(2) of the National Security Act of 1947 (50 U.S.C. 403-4(d)(2)).]

(b) LIMITATION ON DELEGATION OF DUTIES OF DIRECTOR OF CENTRAL INTELLIGENCE.—[Section 105(b) amended section 104(d)(1) of the National Security Act of 1947 (50 U.S.C. 403-4(d)(1)).]

## **TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DIS- ABILITY SYSTEM**

### **SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2001 the sum of \$216,000,000.

## **TITLE III—GENERAL PROVISIONS**

### **Subtitle A—Intelligence Community**

#### **SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.**

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

#### **SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.**

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

#### **SEC. 303. SENSE OF THE CONGRESS ON INTELLIGENCE COMMUNITY CONTRACTING.**

It is the sense of the Congress that the Director of Central Intelligence should continue to direct that elements of the intelligence community, whenever compatible with the national security interests of the United States and consistent with operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, should competitively award contracts in a manner that maximizes the procurement of products properly designated as having been made in the United States.

#### **SEC. 304. NATIONAL SECURITY AGENCY VOLUNTARY SEPARATION ACT.**

[Section 304 inserted section 301 at the beginning of title III of the National Security Act of 1947 (50 U.S.C. 405 et seq.).]

#### **SEC. 305. AUTHORIZATION FOR TRAVEL ON ANY COMMON CARRIER FOR CERTAIN INTELLIGENCE COLLECTION PERSONNEL.**

[Section 305 added section 116 at the end of title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.).]

#### **SEC. 306. UPDATE OF REPORT ON EFFECTS OF FOREIGN ESPIONAGE ON UNITED STATES TRADE SECRETS.**

Not later than 270 days after the date of the enactment of this Act, the Director of Central Intelligence shall submit to Congress a report that updates and revises, as necessary, the report prepared by the Director pursuant to section 310 of the Intelligence Authorization Act for Fiscal Year 2000 (Public Law 106–120; 113 Stat. 1606).

**SEC. 307. POW/MIA ANALYTIC CAPABILITY WITHIN THE INTELLIGENCE COMMUNITY.**

[Section 307 added section 117 at the end of title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.).]

**SEC. 308. APPLICABILITY TO LAWFUL UNITED STATES INTELLIGENCE ACTIVITIES OF FEDERAL LAWS IMPLEMENTING INTERNATIONAL TREATIES AND AGREEMENTS.**

[Section 308 added title X to the National Security Act of 1947 (50 U.S.C. 401 et seq.).]

**SEC. 309. [50 U.S.C. 435a] LIMITATION ON HANDLING, RETENTION, AND STORAGE OF CERTAIN CLASSIFIED MATERIALS BY THE DEPARTMENT OF STATE.**

(a) **CERTIFICATION REGARDING FULL COMPLIANCE WITH REQUIREMENTS.**—The Director of Central Intelligence shall certify to the appropriate committees of Congress whether or not each covered element of the Department of State is in full compliance with all applicable directives of the Director of Central Intelligence relating to the handling, retention, or storage of covered classified material.

(b) **LIMITATION ON CERTIFICATION.**—The Director of Central Intelligence may not certify a covered element of the Department of State as being in full compliance with the directives referred to in subsection (a) if the covered element is currently subject to a waiver of compliance with respect to any such directive.

(c) **REPORT ON NONCOMPLIANCE.**—Whenever the Director of Central Intelligence determines that a covered element of the Department of State is not in full compliance with any directive referred to in subsection (a), the Director shall promptly notify the appropriate committees of Congress of such determination.

(d) **EFFECTS OF CERTIFICATION OF NON-FULL COMPLIANCE.**—(1) Subject to subsection (e), effective as of January 1, 2001, a covered element of the Department of State may not retain or store covered classified material unless the Director has certified under subsection (a) as of such date that the covered element is in full compliance with the directives referred to in subsection (a).

(2) If the prohibition in paragraph (1) takes effect in accordance with that paragraph, the prohibition shall remain in effect until the date on which the Director certifies under subsection (a) that the covered element involved is in full compliance with the directives referred to in that subsection.

(e) **WAIVER BY DIRECTOR OF CENTRAL INTELLIGENCE.**—(1) The Director of Central Intelligence may waive the applicability of the prohibition in subsection (d) to an element of the Department of State otherwise covered by such prohibition if the Director determines that the waiver is in the national security interests of the United States.

(2) The Director shall submit to appropriate committees of Congress a report on each exercise of the waiver authority in paragraph (1).

(3) Each report under paragraph (2) with respect to the exercise of authority under paragraph (1) shall set forth the following:

(A) The covered element of the Department of State addressed by the waiver.

(B) The reasons for the waiver.

(C) The actions that will be taken to bring such element into full compliance with the directives referred to in subsection (a), including a schedule for completion of such actions.

(D) The actions taken by the Director to protect any covered classified material to be handled, retained, or stored by such element pending achievement of full compliance of such element with such directives.

(f) DEFINITIONS.—In this section:

(1) The term “appropriate committees of Congress” means the following:

(A) The Select Committee on Intelligence and the Committee on Foreign Relations of the Senate.

(B) The Permanent Select Committee on Intelligence and the Committee on International Relations of the House of Representatives.

(2) The term “covered classified material” means any material classified at the Sensitive Compartmented Information (SCI) level.

(3) The term “covered element of the Department of State” means each element of the Department of State that handles, retains, or stores covered classified material.

(4) The term “material” means any data, regardless of physical form or characteristic, including written or printed matter, automated information systems storage media, maps, charts, paintings, drawings, films, photographs, engravings, sketches, working notes, papers, reproductions of any such things by any means or process, and sound, voice, magnetic, or electronic recordings.

(5) The term “Sensitive Compartmented Information (SCI) level”, in the case of classified material, means a level of classification for information in such material concerning or derived from intelligence sources, methods, or analytical processes that requires such information to be handled within formal access control systems established by the Director of Central Intelligence.

**SEC. 310. [40 U.S.C. 1101 note] DESIGNATION OF DANIEL PATRICK MOYNIHAN PLACE.**

(a) \* \* \*

(b) DESIGNATION.—The parcel of land located in the northwest quadrant of Washington, District of Columbia, and described in subsection (c) shall be known and designated as “Daniel Patrick Moynihan Place”.

(c) BOUNDARIES.—The parcel of land described in this subsection is the portion of Woodrow Wilson Plaza (as designated by Public Law 103–284 (108 Stat. 1448)) that is bounded—

(1) on the west by the eastern facade of the Ronald Reagan Building and International Trade Center;

(2) on the east by the western facade of the Ariel Rios Building;

(3) on the north by the southern edge of the sidewalk abutting Pennsylvania Avenue; and

(4) on the south by the line that extends west to the facade of the Ronald Reagan Building and International Trade Center, from the point where the west facade of the Ariel Rios

Building intersects the north end of the west hemicycle of that building.

(d) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the parcel of land described in subsection (c) shall be deemed to be a reference to Daniel Patrick Moynihan Place.

(e) MARKERS.—The Administrator of General Services shall erect appropriate gateways or other markers in Daniel Patrick Moynihan Place so denoting that place.

## **Subtitle B—Diplomatic Telecommunications Service Program Office (DTS-PO)<sup>1</sup>**

### **SEC. 321. REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.**

(a) REORGANIZATION.—Effective 60 days after the date of the enactment of this Act, the Diplomatic Telecommunications Service Program Office (DTS-PO) established pursuant to title V of Public Law 102–140 shall be reorganized in accordance with this subtitle.

(b) PURPOSE AND DUTIES OF DTS-PO.—The purpose and duties of DTS-PO shall be to carry out a program for the establishment and maintenance of a diplomatic telecommunications system and communications network (hereinafter in this subtitle referred to as “DTS”) capable of providing multiple levels of service to meet the wide ranging needs of all United States Government agencies and departments at diplomatic facilities abroad, including national security needs for secure, reliable, and robust communications capabilities.

### **SEC. 322. [22 U.S.C. 7302] PERSONNEL.**

(a) ESTABLISHMENT OF POSITION OF CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—Effective 60 days after the date of the enactment of this Act, there is established the position of Chief Executive Officer of the Diplomatic Telecommunications Service Program Office (hereinafter in this subtitle referred to as the “CEO”).

(2) QUALIFICATIONS.—

(A) IN GENERAL.—The CEO shall be an individual who—

- (i) is a communications professional;
- (ii) has served in the commercial telecommunications industry for at least 7 years;
- (iii) has an extensive background in communications system design, maintenance, and support and a background in organizational management; and

<sup>1</sup> Section 311 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107–108; 115 Stat. 1394) provides:

#### **SEC. 311. ONE-YEAR SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.**

Notwithstanding any provision of subtitle B of title III of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106–567; 114 Stat. 2843; 22 U.S.C. 7301 et seq.), relating to the reorganization of the Diplomatic Telecommunications Service Program Office, no provision of that subtitle shall be effective during the period beginning on the date of the enactment of this Act and ending on October 1, 2002.

(iv) submits to a background investigation and possesses the necessary qualifications to obtain a security clearance required to meet the highest United States Government security standards.

(B) LIMITATIONS.—The CEO may not be an individual who was an officer or employee of DTS-PO prior to the date of the enactment of this Act.

(3) APPOINTMENT AUTHORITY.—The CEO of DTS-PO shall be appointed by the Director of the Office of Management and Budget.

(4) FIRST APPOINTMENT.—

(i) DEADLINE.—The first appointment under this subsection shall be made not later than May 1, 2001.

(ii) LIMITATION ON USE OF FUNDS.—Of the funds available for DTS-PO on the date of the enactment of this Act, not more than 75 percent of such funds may be obligated or expended until a CEO is appointed under this subsection and assumes such position.

(iii) MAY NOT BE AN OFFICER OR EMPLOYEE OF FEDERAL GOVERNMENT.—The individual first appointed as CEO under this subtitle may not have been an officer or employee of the Federal government during the 1-year period immediately preceding such appointment.

(5) VACANCY.—In the event of a vacancy in the position of CEO or during the absence or disability of the CEO, the Director of the Office of Management and Budget may designate an officer or employee of DTS-PO to perform the duties of the position as the acting CEO.

(6) AUTHORITIES AND DUTIES.—

(A) IN GENERAL.—The CEO shall have responsibility for day-to-day management and operations of DTS, subject to the supervision of the Diplomatic Telecommunication Service Oversight Board established under this subtitle.

(B) SPECIFIC AUTHORITIES.—In carrying out the responsibility for day-to-day management and operations of DTS, the CEO shall, at a minimum, have—

(i) final decision-making authority for implementing DTS policy; and

(ii) final decision-making authority for managing all communications technology and security upgrades to satisfy DTS user requirements.

(C) CERTIFICATION REGARDING SECURITY.—The CEO shall certify to the appropriate congressional committees that the operational and communications security requirements and practices of DTS conform to the highest security requirements and practices required by any agency utilizing the DTS.

(D) REPORTS TO CONGRESS.—

(i) SEMIANNUAL REPORTS.—Except as provided in clause (ii), beginning on August 1, 2001, and every 6 months thereafter, the CEO shall submit to the appropriate congressional committees of jurisdiction a report regarding the activities of DTS-PO during the preceding 6 months, the current capabilities of DTS-PO, and the priorities of DTS-PO for the subsequent

6-month period. Each report shall include a discussion about any administrative, budgetary, or management issues that hinder the ability of DTS-PO to fulfill its mandate.

(ii) SUBMITTAL DATE OF REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of reports required to be submitted under clause (i) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal dates for such reports shall be as provided in section 507 of that Act.

(iii) OTHER REPORTS.—In addition to the reports required by clause (i), the CEO shall keep the appropriate congressional committees of jurisdiction fully and currently informed with regard to DTS-PO activities, particularly with regard to any significant security infractions or major outages in the DTS.

(b) ESTABLISHMENT OF POSITIONS OF DEPUTY EXECUTIVE OFFICER.—

(1) IN GENERAL.—There shall be two Deputy Executive Officers of the Diplomatic Telecommunications Service Program Office, each to be appointed by the President.

(2) DUTIES.—The Deputy Executive Officers shall perform such duties as the CEO may require.

(c) TERMINATION OF POSITIONS OF DIRECTOR AND DEPUTY DIRECTOR.—Effective upon the first appointment of a CEO pursuant to subsection (a), the positions of Director and Deputy Director of DTS-PO shall terminate.

(d) EMPLOYEES OF DTS-PO.—

(1) IN GENERAL.—DTS-PO is authorized to have the following employees: a CEO established under subsection (a), two Deputy Executive Officers established under subsection (b), and not more than four other employees.

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The CEO and other officers and employees of DTS-PO may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(3) AUTHORITY OF DIRECTOR OF OMB TO PRESCRIBE PAY OF EMPLOYEES.—The Director of the Office of Management and Budget shall prescribe the rates of basic pay for positions to which employees are appointed under this section on the basis of their unique qualifications.

(e) STAFF OF FEDERAL AGENCIES.—

(1) IN GENERAL.—Upon request of the CEO, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to DTS-PO to assist it in carrying out its duties under this subtitle.

(2) CONTINUATION OF SERVICE.—An employee of a Federal department or agency who was performing services on behalf of DTS-PO prior to the effective date of the reorganization

under this subtitle shall continue to be detailed to DTS-PO after that date, upon request.

**SEC. 323. [22 U.S.C. 7303] DIPLOMATIC TELECOMMUNICATIONS SERVICE OVERSIGHT BOARD.**

(a) OVERSIGHT BOARD ESTABLISHED.—

(1) IN GENERAL.—There is hereby established the Diplomatic Telecommunications Service Oversight Board (hereinafter in this subtitle referred to as the “Board”) as an instrumentality of the United States with the powers and authorities herein provided.

(2) STATUS.—The Board shall oversee and monitor the operations of DTS-PO and shall be accountable for the duties assigned to DTS-PO under this subtitle.

(3) MEMBERSHIP.—

(A) IN GENERAL.—The Board shall consist of three members as follows:

(i) The Deputy Director of the Office of Management and Budget.

(ii) Two members to be appointed by the President.

(B) CHAIRPERSON.—The chairperson of the Board shall be the Deputy Director of the Office of Management and Budget.

(C) TERMS.—Members of the Board appointed by the President shall serve at the pleasure of the President.

(D) QUORUM REQUIRED.—A quorum shall consist of all members of the Board and all decisions of the Board shall require a majority vote.

(4) PROHIBITION ON COMPENSATION.—Members of the Board may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(5) DUTIES AND AUTHORITIES.—The Board shall have the following duties and authorities with respect to DTS-PO:

(A) To review and approve overall strategies, policies, and goals established by DTS-PO for its activities.

(B) To review and approve financial plans, budgets, and periodic financing requests developed by DTS-PO.

(C) To review the overall performance of DTS-PO on a periodic basis, including its work, management activities, and internal controls, and the performance of DTS-PO relative to approved budget plans.

(D) To require from DTS-PO any reports, documents, and records the Board considers necessary to carry out its oversight responsibilities.

(E) To evaluate audits of DTS-PO.

(6) LIMITATION ON AUTHORITY.—The CEO shall have the authority, without any prior review or approval by the Board, to make such determinations as the CEO considers appropriate and take such actions as the CEO considers appropriate with respect to the day-to-day management and operation of DTS-PO and to carry out the reforms of DTS-PO authorized by section 305 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (section 305 of appendix G of Public Law 106–113).

**SEC. 324. [22 U.S.C. 7304] GENERAL PROVISIONS.**

(a) REPORT TO CONGRESS.—Not later than March 1, 2001, the Director of the Office of Management and Budget shall submit to the appropriate congressional committees of jurisdiction a report which includes the following elements with respect to DTS-PO:

(1) Clarification of the process for the CEO to report to the Board.

(2) Details of the CEO's duties and responsibilities.

(3) Details of the compensation package for the CEO and other employees of DTS-PO.

(4) Recommendations to the Overseas Security Policy Board (OSPB) for updates.

(5) Security standards for information technology.

(6) The upgrade precedence plan for overseas posts with national security interests.

(7) A spending plan for the additional funds provided for the operation and improvement of DTS for fiscal year 2001.

(b) NOTIFICATION REQUIREMENTS.—The notification requirements of sections 502 and 505 of the National Security Act of 1947 shall apply to DTS-PO and the Board.

(c) PROCUREMENT AUTHORITY OF DTS-PO.—The procurement authorities of any of the users of DTS shall be available to the DTS-PO.

(d) DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES OF JURISDICTION.—As used in this subtitle, the term “appropriate congressional committees of jurisdiction” means the Committee on Appropriations, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate and the Committee on Appropriations, the Committee on International Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(e) STATUTORY CONSTRUCTION.—Nothing in this subtitle shall be construed to negate or to reduce the statutory obligations of any United States department or agency head.

(f) AUTHORIZATION OF APPROPRIATIONS FOR DTS-PO.—For each of the fiscal years 2002 through 2006, there are authorized to be appropriated directly to DTS-PO such sums as may be necessary to carry out the management, oversight, and security requirements of this subtitle.

## **TITLE IV—CENTRAL INTELLIGENCE AGENCY**

**SEC. 401. MODIFICATIONS TO CENTRAL INTELLIGENCE AGENCY'S CENTRAL SERVICES PROGRAM.**

(a) DEPOSITS IN CENTRAL SERVICES WORKING CAPITAL FUND.—[Section 401(a) amended section 21(c)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(c)(2)).]

(b) CLARIFICATION OF COSTS RECOVERABLE UNDER PROGRAM.—[Section 401(b) amended section 21(e)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(e)(1)).]

(c) FINANCIAL STATEMENTS OF PROGRAM.—[Section 401(c) amended section 21(g)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(g)(2)).]

**SEC. 402. TECHNICAL CORRECTIONS.**

(a) CLARIFICATION REGARDING REPORTS ON EXERCISE OF AUTHORITY.—[Section 402(a) amended subsections (d)(1) and (e)(5) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q).]

(b) TERMINOLOGY WITH RESPECT TO GOVERNMENT AGENCIES.—[Section 402(b) amended section 17(e)(8) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(e)(8)).]

**SEC. 403. EXPANSION OF INSPECTOR GENERAL ACTIONS REQUIRING A REPORT TO CONGRESS.**

[Section 403 amended section 17(d)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(3)).]

**SEC. 404. DETAIL OF EMPLOYEES TO THE NATIONAL RECONNAISSANCE OFFICE.**

[Section 404 added section 11 to the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.).]

**SEC. 405. TRANSFERS OF FUNDS TO OTHER AGENCIES FOR ACQUISITION OF LAND.**

(a) IN GENERAL.—[Section 405(a) added subsection (c) to section 5 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f).]

(b) CONFORMING STYLISTIC AMENDMENTS.—[Section 405(b) amended subsections (a) and (b) of section 5 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f).]

(c) [50 U.S.C. 403f note] APPLICABILITY.—Subsection (c) of section 5 of the Central Intelligence Agency Act of 1949, as added by subsection (a) of this section, shall apply with respect to amounts appropriated or otherwise made available for the Central Intelligence Agency for fiscal years after fiscal year 2000.

**SEC. 406. [50 U.S.C. prec. 5941 note] ELIGIBILITY OF ADDITIONAL EMPLOYEES FOR REIMBURSEMENT FOR PROFESSIONAL LIABILITY INSURANCE.**

(a) IN GENERAL.—Notwithstanding any provision of title VI, section 636 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (5 U.S.C. prec. 5941 note), the Director of Central Intelligence may—

(1) designate as qualified employees within the meaning of subsection (b) of that section appropriate categories of employees not otherwise covered by that subsection; and

(2) use appropriated funds available to the Director to reimburse employees within categories so designated for one-half of the costs incurred by such employees for professional liability insurance in accordance with subsection (a) of that section.

(b) REPORTS.—The Director of Central Intelligence shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee of Intelligence of the House of Representatives a report on each designation of a category of employees under paragraph (1) of subsection (a), including the approximate number of employees covered by such designation and an estimate of the amount to be expended on reimbursement of such employees under paragraph (2) of that subsection.

## TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

### SEC. 501. [50 U.S.C. 403-5 note] ROLE OF DIRECTOR OF CENTRAL INTELLIGENCE IN EXPERIMENTAL PERSONNEL PROGRAM FOR CERTAIN SCIENTIFIC AND TECHNICAL PERSONNEL.

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 Imagery and Mapping 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.

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## TITLE VI—COUNTERINTELLIGENCE MATTERS

### SEC. 601. [50 U.S.C. 1801 note] SHORT TITLE.

This title may be cited as the “Counterintelligence Reform Act of 2000”.

### SEC. 602. ORDERS FOR ELECTRONIC SURVEILLANCE UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) REQUIREMENTS REGARDING CERTAIN APPLICATIONS.—[Section 602(a) added subsection (e) to section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804).]

(b) PROBABLE CAUSE.—[Section 602(b) amended section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805).]

### SEC. 603. ORDERS FOR PHYSICAL SEARCHES UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) REQUIREMENTS REGARDING CERTAIN APPLICATIONS.—[Section 603(a) added subsection (d) to section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823).]

(b) PROBABLE CAUSE.—[Section 603(b) amended section 304 of the Foreign Intelligence Surveillance Act of 1978 that Act (50 U.S.C. 1824).]

### SEC. 604. DISCLOSURE OF INFORMATION ACQUIRED UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 FOR LAW ENFORCEMENT PURPOSES.

(a) INCLUSION OF INFORMATION ON DISCLOSURE IN SEMIANNUAL OVERSIGHT REPORT.—[Section 604(a) amended section 108(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1808(a)).]

(b) [50 U.S.C. 1806 note] REPORT ON MECHANISMS FOR DETERMINATIONS OF DISCLOSURE OF INFORMATION FOR LAW ENFORCEMENT PURPOSES.—(1) The Attorney General shall submit to the appropriate committees of Congress a report on the authorities and procedures utilized by the Department of Justice for determining whether or not to disclose information acquired under the Foreign

Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for law enforcement purposes.

(2) In this subsection, the term “appropriate committees of Congress” means the following:

(A) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

(B) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

**SEC. 605. COORDINATION OF COUNTERINTELLIGENCE WITH THE FEDERAL BUREAU OF INVESTIGATION.**

(a) TREATMENT OF CERTAIN SUBJECTS OF INVESTIGATION.—[Section 605 amended section 811(c) of the Intelligence Authorization Act for Fiscal Year 1995 (50 U.S.C. 402a).]

**SEC. 606. ENHANCING PROTECTION OF NATIONAL SECURITY AT THE DEPARTMENT OF JUSTICE.**

(a) AUTHORIZATION FOR INCREASED RESOURCES TO FULFILL NATIONAL SECURITY MISSION OF THE DEPARTMENT OF JUSTICE.—There are authorized to be appropriated to the Department of Justice for the activities of the Office of Intelligence Policy and Review to help meet the increased personnel demands to combat terrorism, process applications to the Foreign Intelligence Surveillance Court, participate effectively in counter-espionage investigations, provide policy analysis on national security issues, and enhance secure computer and telecommunications facilities—

(1) \$7,000,000 for fiscal year 2001;

(2) \$7,500,000 for fiscal year 2002; and

(3) \$8,000,000 for fiscal year 2003.

(b) AVAILABILITY OF FUNDS.—(1) No funds authorized to be appropriated by subsection (a) for the Office of Intelligence Policy and Review for fiscal years 2002 and 2003 may be obligated or expended until the date on which the Attorney General submits the report required by paragraph (2) for the year involved.

(2)(A) The Attorney General shall submit to the committees of Congress specified in subparagraph (B) an annual report on the manner in which the funds authorized to be appropriated by subsection (a) for the Office of Intelligence Policy and Review will be used by that Office—

(i) to improve and strengthen its oversight of Federal Bureau of Investigation field offices in the implementation of orders under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.); and

(ii) to streamline and increase the efficiency of the application process under that Act.

(B) The committees of Congress referred to in this subparagraph are the following:

(i) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

(ii) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(3) In addition to the report required by paragraph (2), the Attorney General shall also submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on In-

telligence of the House of Representatives a report that addresses the issues identified in the semiannual report of the Attorney General to such committees under section 108(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1808(a)) that was submitted in April 2000, including any corrective actions with regard to such issues. The report under this paragraph shall be submitted in classified form.

(4) Funds made available pursuant to subsection (a), in any fiscal year, shall remain available until expended.

(c) REPORT ON COORDINATING NATIONAL SECURITY AND INTELLIGENCE FUNCTIONS WITHIN THE DEPARTMENT OF JUSTICE.—The Attorney General shall report to the committees of Congress specified in subsection (b)(2)(B) within 120 days on actions that have been or will be taken by the Department to—

(1) promote quick and efficient responses to national security issues;

(2) centralize a point-of-contact within the Department on national security matters for external entities and agencies; and

(3) coordinate the dissemination of intelligence information within the appropriate components of the Department and the formulation of policy on national security issues.

**SEC. 607. COORDINATION REQUIREMENTS RELATING TO THE PROSECUTION OF CASES INVOLVING CLASSIFIED INFORMATION.**

[Section 607 added section 9A to the Classified Information Procedures Act (18 U.S.C. App).]

**SEC. 608. SEVERABILITY.**

If any provision of this title (including an amendment made by this title), or the application thereof, to any person or circumstance, is held invalid, the remainder of this title (including the amendments made by this title), and the application thereof, to other persons or circumstances shall not be affected thereby.

## **TITLE VII—DECLASSIFICATION OF INFORMATION**

**SEC. 701. [50 U.S.C. 435 note] SHORT TITLE.**

This title may be cited as the “Public Interest Declassification Act of 2000”.

**SEC. 702. FINDINGS.**

Congress makes the following findings:

(1) It is in the national interest to establish an effective, coordinated, and cost-effective means by which records on specific subjects of extraordinary public interest that do not undermine the national security interests of the United States may be collected, retained, reviewed, and disseminated to Congress, policymakers in the executive branch, and the public.

(2) Ensuring, through such measures, public access to information that does not require continued protection to maintain the national security interests of the United States is a key to striking the balance between secrecy essential to na-

tional security and the openness that is central to the proper functioning of the political institutions of the United States.

**SEC. 703. PUBLIC INTEREST DECLASSIFICATION BOARD.**

(a) **ESTABLISHMENT.**—There is established within the executive branch of the United States a board to be known as the “Public Interest Declassification Board” (in this title referred to as the “Board”).

(b) **PURPOSES.**—The purposes of the Board are as follows:

(1) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on the systematic, thorough, coordinated, and comprehensive identification, collection, review for declassification, and release to Congress, interested agencies, and the public of declassified records and materials (including donated historical materials) that are of archival value, including records and materials of extraordinary public interest.

(2) To promote the fullest possible public access to a thorough, accurate, and reliable documentary record of significant United States national security decisions and significant United States national security activities in order to—

(A) support the oversight and legislative functions of Congress;

(B) support the policymaking role of the executive branch;

(C) respond to the interest of the public in national security matters; and

(D) promote reliable historical analysis and new avenues of historical study in national security matters.

(3) To provide recommendations to the President for the identification, collection, and review for declassification of information of extraordinary public interest that does not undermine the national security of the United States, to be undertaken in accordance with a declassification program that has been established or may be established by the President by Executive order.

(4) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on policies deriving from the issuance by the President of Executive orders regarding the classification and declassification of national security information.

(c) **MEMBERSHIP.**—(1) The Board shall be composed of nine individuals appointed from among citizens of the United States who are preeminent in the fields of history, national security, foreign policy, intelligence policy, social science, law, or archives, including individuals who have served in Congress or otherwise in the Federal Government or have otherwise engaged in research, scholarship, or publication in such fields on matters relating to the national security of the United States, of whom—

(A) five shall be appointed by the President;

(B) one shall be appointed by the Speaker of the House of Representatives;

(C) one shall be appointed by the majority leader of the Senate;

(D) one shall be appointed by the minority leader of the Senate; and

(E) one shall be appointed by the minority leader of the House of Representatives.

(2)(A) Of the members initially appointed to the Board by the President—

(i) three shall be appointed for a term of 4 years;

(ii) one shall be appointed for a term of 3 years; and

(iii) one shall be appointed for a term of 2 years.

(B) The members initially appointed to the Board by the Speaker of the House of Representatives or by the majority leader of the Senate shall be appointed for a term of 3 years.

(C) The members initially appointed to the Board by the minority leader of the House of Representatives or the Senate shall be appointed for a term of 2 years.

(D) Any subsequent appointment to the Board shall be for a term of 3 years.

(3) A vacancy in the Board shall be filled in the same manner as the original appointment. A member of the Board appointed to fill a vacancy before the expiration of a term shall serve for the remainder of the term.

(4) A member of the Board may be appointed to a new term on the Board upon the expiration of the member's term on the Board, except that no member may serve more than three full terms on the Board.

(d) CHAIRPERSON; EXECUTIVE SECRETARY.—(1)(A) The President shall designate one of the members of the Board as the Chairperson of the Board.

(B) The term of service as Chairperson of the Board shall be 2 years.

(C) A member serving as Chairperson of the Board may be redesignated as Chairperson of the Board upon the expiration of the member's term as Chairperson of the Board, except that no member shall serve as Chairperson of the Board for more than 6 years.

(2) The Director of the Information Security Oversight Office shall serve as the Executive Secretary of the Board.

(e) MEETINGS.—The Board shall meet as needed to accomplish its mission, consistent with the availability of funds. A majority of the members of the Board shall constitute a quorum.

(f) STAFF.—Any employee of the Federal Government may be detailed to the Board, with the agreement of and without reimbursement to the detailing agency, and such detail shall be without interruption or loss of civil, military, or foreign service status or privilege.

(g) SECURITY.—(1) The members and staff of the Board shall, as a condition of appointment to or employment with the Board, hold appropriate security clearances for access to the classified records and materials to be reviewed by the Board or its staff, and shall follow the guidance and practices on security under applicable Executive orders and Presidential or agency directives.

(2) The head of an agency shall, as a condition of granting access to a member of the Board, the Executive Secretary of the Board, or a member of the staff of the Board to classified records or materials of the agency under this title, require the member, the Executive Secretary, or the member of the staff, as the case may be, to—

(A) execute an agreement regarding the security of such records or materials that is approved by the head of the agency; and

(B) hold an appropriate security clearance granted or recognized under the standard procedures and eligibility criteria of the agency, including any special access approval required for access to such records or materials.

(3) The members of the Board, the Executive Secretary of the Board, and the members of the staff of the Board may not use any information acquired in the course of their official activities on the Board for nonofficial purposes.

(4) For purposes of any law or regulation governing access to classified information that pertains to the national security of the United States, and subject to any limitations on access arising under section 706(b), and to facilitate the advisory functions of the Board under this title, a member of the Board seeking access to a record or material under this title shall be deemed for purposes of this subsection to have a need to know the contents of the record or material.

(h) COMPENSATION.—(1) Each member of the Board shall receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay payable for positions at ES-1 of the Senior Executive Service under section 5382 of title 5, United States Code, for each day such member is engaged in the actual performance of duties of the Board.

(2) Members of the Board 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 the duties of the Board.

(i) GUIDANCE; ANNUAL BUDGET.—(1) On behalf of the President, the Assistant to the President for National Security Affairs shall provide guidance on policy to the Board.

(2) The Executive Secretary of the Board, under the direction of the Chairperson of the Board and the Board, and acting in consultation with the Archivist of the United States, the Assistant to the President for National Security Affairs, and the Director of the Office of Management and Budget, shall prepare the annual budget of the Board.

(j) SUPPORT.—The Information Security Oversight Office may support the activities of the Board under this title. Such support shall be provided on a reimbursable basis.

(k) PUBLIC AVAILABILITY OF RECORDS AND REPORTS.—(1) The Board shall make available for public inspection records of its proceedings and reports prepared in the course of its activities under this title to the extent such records and reports are not classified and would not be exempt from release under the provisions of section 552 of title 5, United States Code.

(2) In making records and reports available under paragraph (1), the Board shall coordinate the release of such records and reports with appropriate officials from agencies with expertise in classified information in order to ensure that such records and reports do not inadvertently contain classified information.

(1) **APPLICABILITY OF CERTAIN ADMINISTRATIVE LAWS.**—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Board under this title. However, the records of the Board shall be governed by the provisions of the Federal Records Act of 1950.

**SEC. 704. IDENTIFICATION, COLLECTION, AND REVIEW FOR DECLASSIFICATION OF INFORMATION OF ARCHIVAL VALUE OR EXTRAORDINARY PUBLIC INTEREST.**

(a) **BRIEFINGS ON AGENCY DECLASSIFICATION PROGRAMS.**—(1) As requested by the Board, or by the Select Committee on Intelligence of the Senate or the Permanent Select Committee on Intelligence of the House of Representatives, the head of any agency with the authority under an Executive order to classify information shall provide to the Board, the Select Committee on Intelligence of the Senate, or the Permanent Select Committee on Intelligence of the House of Representatives, on an annual basis, a summary briefing and report on such agency's progress and plans in the declassification of national security information. Such briefing shall cover the declassification goals set by statute, regulation, or policy, the agency's progress with respect to such goals, and the agency's planned goals and priorities for its declassification activities over the next 2 fiscal years. Agency briefings and reports shall give particular attention to progress on the declassification of records and materials that are of archival value or extraordinary public interest to the people of the United States.

(2)(A) The annual briefing and report under paragraph (1) for agencies within the Department of Defense, including the military departments and the elements of the intelligence community, shall be provided on a consolidated basis.

(B) In this paragraph, the term "elements of the intelligence community" means the elements of the intelligence community specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(b) **RECOMMENDATIONS ON AGENCY DECLASSIFICATION PROGRAMS.**—(1) Upon reviewing and discussing declassification plans and progress with an agency, the Board shall provide to the head of the agency the written recommendations of the Board as to how the agency's declassification program could be improved. A copy of each recommendation shall also be submitted to the Assistant to the President for National Security Affairs and the Director of the Office of Management and Budget.

(2) Consistent with the provisions of section 703(k), the Board's recommendations to the head of an agency under paragraph (1) shall become public 60 days after such recommendations are sent to the head of the agency under that paragraph.

(c) **RECOMMENDATIONS ON SPECIAL SEARCHES FOR RECORDS OF EXTRAORDINARY PUBLIC INTEREST.**—(1) The Board shall also make recommendations to the President regarding proposed initiatives to identify, collect, and review for declassification classified records and materials of extraordinary public interest.

(2) In making recommendations under paragraph (1), the Board shall consider the following:

(A) The opinions and requests of Members of Congress, including opinions and requests expressed or embodied in letters or legislative proposals.

(B) The opinions and requests of the National Security Council, the Director of Central Intelligence, and the heads of other agencies.

(C) The opinions of United States citizens.

(D) The opinions of members of the Board.

(E) The impact of special searches on systematic and all other on-going declassification programs.

(F) The costs (including budgetary costs) and the impact that complying with the recommendations would have on agency budgets, programs, and operations.

(G) The benefits of the recommendations.

(H) The impact of compliance with the recommendations on the national security of the United States.

(d) **PRESIDENT'S DECLASSIFICATION PRIORITIES.**—(1) Concurrent with the submission to Congress of the budget of the President each fiscal year under section 1105 of title 31, United States Code, the Director of the Office of Management and Budget shall publish a description of the President's declassification program and priorities, together with a listing of the funds requested to implement that program.

(2) Nothing in this title shall be construed to substitute or supersede, or establish a funding process for, any declassification program that has been established or may be established by the President by Executive order.

**SEC. 705. PROTECTION OF NATIONAL SECURITY INFORMATION AND OTHER INFORMATION.**

(a) **IN GENERAL.**—Nothing in this title shall be construed to limit the authority of the head of an agency to classify information or to continue the classification of information previously classified by that agency.

(b) **SPECIAL ACCESS PROGRAMS.**—Nothing in this title shall be construed to limit the authority of the head of an agency to grant or deny access to a special access program.

(c) **AUTHORITIES OF DIRECTOR OF CENTRAL INTELLIGENCE.**—Nothing in this title shall be construed to limit the authorities of the Director of Central Intelligence as the head of the intelligence community, including the Director's responsibility to protect intelligence sources and methods from unauthorized disclosure as required by section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403-3(c)(6)).

(d) **EXEMPTIONS TO RELEASE OF INFORMATION.**—Nothing in this title shall be construed to limit any exemption or exception to the release to the public under this title of information that is protected under subsection (b) of section 552 of title 5, United States Code (commonly referred to as the "Freedom of Information Act"), or section 552a of title 5, United States Code (commonly referred to as the "Privacy Act").

(e) **WITHHOLDING INFORMATION FROM CONGRESS.**—Nothing in this title shall be construed to authorize the withholding of information from Congress.

**SEC. 706. STANDARDS AND PROCEDURES.**

(a) **LIAISON.**—(1) The head of each agency with the authority under an Executive order to classify information and the head of each Federal Presidential library shall designate an employee of such agency or library to act as liaison to the Board for purposes of this title.

(2) The Board may establish liaison and otherwise consult with such other historical and advisory committees as the Board considers appropriate for purposes of this title.

(b) **LIMITATIONS ON ACCESS.**—(1)(A) Except as provided in paragraph (2), if the head of an agency or the head of a Federal Presidential library determines it necessary to deny or restrict access of the Board, or of the agency or library liaison to the Board, to information contained in a record or material, in whole or in part, the head of the agency or the head of the library shall promptly notify the Board in writing of such determination.

(B) Each notice to the Board under subparagraph (A) shall include a description of the nature of the records or materials, and a justification for the determination, covered by such notice.

(2) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of Central Intelligence, or the head of any other agency, the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

(c) **DISCRETION TO DISCLOSE.**—At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the public's interest in the disclosure of records or materials of the agency covered by such review, and still properly classified, outweighs the Government's need to protect such records or materials, and may release such records or materials in accordance with the provisions of Executive Order No. 12958 or any successor order to such Executive order.

(d) **DISCRETION TO PROTECT.**—At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the interest of the agency in the protection of records or materials of the agency covered by such review, and still properly classified, outweighs the public's need for access to such records or materials, and may deny release of such records or materials in accordance with the provisions of Executive Order No. 12958 or any successor order to such Executive order.

(e) **REPORTS.**—(1)(A) Except as provided in paragraph (2), the Board shall annually submit to the appropriate congressional committees a report on the activities of the Board under this title, including summary information regarding any denials to the Board by the head of an agency or the head of a Federal Presidential library of access to records or materials under this title.

(B) In this paragraph, the term "appropriate congressional committees" means the Select Committee on Intelligence and the Committee on Governmental Affairs of the Senate and the Permanent Select Committee on Intelligence and the Committee on Government Reform of the House of Representatives.

(2) Notwithstanding paragraph (1), notice that the Board has been denied access to records and materials, and a justification for the determination in support of the denial, shall be submitted by the agency denying the access as follows:

(A) In the case of the denial of access to a special access program created by the Secretary of Defense, to the Committees on Armed Services and Appropriations of the Senate and to the Committees on Armed Services and Appropriations of the House of Representatives.

(B) In the case of the denial of access to a special access program created by the Director of Central Intelligence, or by the head of any other agency (including the Department of Defense) if the special access program pertains to intelligence activities, or of access to any information and materials relating to intelligence sources and methods, to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(C) In the case of the denial of access to a special access program created by the Secretary of Energy or the Administrator for Nuclear Security, to the Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate and to the Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

#### **SEC. 707. JUDICIAL REVIEW.**

Nothing in this title limits the protection afforded to any information under any other provision of law. This title is not intended and may not be construed to create any right or benefit, substantive or procedural, enforceable against the United States, its agencies, its officers, or its employees. This title does not modify in any way the substantive criteria or procedures for the classification of information, nor does this title create any right or benefit subject to judicial review.

#### **SEC. 708. FUNDING.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There is hereby authorized to be appropriated to carry out the provisions of this title amounts as follows:

(1) For fiscal year 2001, \$650,000.

(2) For each fiscal year after fiscal year 2001, such sums as may be necessary for such fiscal year.

(b) **FUNDING REQUESTS.**—The President shall include in the budget submitted to Congress for each fiscal year under section 1105 of title 31, United States Code, a request for amounts for the activities of the Board under this title during such fiscal year.

#### **SEC. 709. DEFINITIONS.**

In this title:

(1) **AGENCY.**—(A) Except as provided in subparagraph (B), the term “agency” means the following:

(i) An Executive agency, as that term is defined in section 105 of title 5, United States Code.

(ii) A military department, as that term is defined in section 102 of such title.

(iii) Any other entity in the executive branch that comes into the possession of classified information.

(B) The term does not include the Board.

(2) **CLASSIFIED MATERIAL OR RECORD.**—The terms “classified material” and “classified record” include any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable records, and other documentary material, regardless of physical form or characteristics, that has been determined pursuant to Executive order to require protection against unauthorized disclosure in the interests of the national security of the United States.

(3) **DECLASSIFICATION.**—The term “declassification” means the process by which records or materials that have been classified are determined no longer to require protection from unauthorized disclosure to protect the national security of the United States.

(4) **DONATED HISTORICAL MATERIAL.**—The term “donated historical material” means collections of personal papers donated or given to a Federal Presidential library or other archival repository under a deed of gift or otherwise.

(5) **FEDERAL PRESIDENTIAL LIBRARY.**—The term “Federal Presidential library” means a library operated and maintained by the United States Government through the National Archives and Records Administration under the applicable provisions of the Federal Records Act of 1950.

(6) **NATIONAL SECURITY.**—The term “national security” means the national defense or foreign relations of the United States.

(7) **RECORDS OR MATERIALS OF EXTRAORDINARY PUBLIC INTEREST.**—The term “records or materials of extraordinary public interest” means records or materials that—

(A) demonstrate and record the national security policies, actions, and decisions of the United States, including—

(i) policies, events, actions, and decisions which led to significant national security outcomes; and

(ii) the development and evolution of significant United States national security policies, actions, and decisions;

(B) will provide a significantly different perspective in general from records and materials publicly available in other historical sources; and

(C) would need to be addressed through ad hoc record searches outside any systematic declassification program established under Executive order.

(8) **RECORDS OF ARCHIVAL VALUE.**—The term “records of archival value” means records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government.

**SEC. 710. EFFECTIVE DATE; SUNSET.**

(a) **EFFECTIVE DATE.**—This title shall take effect on the date that is 120 days after the date of the enactment of this Act.

(b) SUNSET.—The provisions of this title shall expire 4 years after the date of the enactment of this Act, unless reauthorized by statute.

## **TITLE VIII—DISCLOSURE OF INFORMATION ON JAPANESE IMPERIAL GOVERNMENT**

### **SEC. 801. [50 U.S.C. 552 note] SHORT TITLE.**

This title may be cited as the “Japanese Imperial Government Disclosure Act of 2000”.

### **SEC. 802. DESIGNATION.**

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term “agency” has the meaning given such term under section 551 of title 5, United States Code.

(2) INTERAGENCY GROUP.—The term “Interagency Group” means the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group established under subsection (b).

(3) JAPANESE IMPERIAL GOVERNMENT RECORDS.—The term “Japanese Imperial Government records” means classified records or portions of records that pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the experimentation on, and persecution of, any person because of race, religion, national origin, or political opinion, during the period beginning September 18, 1931, and ending on December 31, 1948, under the direction of, or in association with—

(A) the Japanese Imperial Government;

(B) any government in any area occupied by the military forces of the Japanese Imperial Government;

(C) any government established with the assistance or cooperation of the Japanese Imperial Government; or

(D) any government which was an ally of the Japanese Imperial Government.

(4) RECORD.—The term “record” means a Japanese Imperial Government record.

(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the President shall designate the Working Group established under the Nazi War Crimes Disclosure Act (Public Law 105–246; 5 U.S.C. 552 note) to also carry out the purposes of this title with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 3 years after the date on which this title takes effect. Such Working Group is redesignated as the “Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group”.

(2) MEMBERSHIP.—Section 2(b)(2) of such Act is amended by striking “3 other persons” and inserting “4 other persons who shall be members of the public, of whom 3 shall be per-

sons appointed under the provisions of this Act in effect on October 8, 1998.”.

(c) FUNCTIONS.—Not later than 1 year after the date of the enactment of this Act, the Interagency Group shall, to the greatest extent possible consistent with section 803—

(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Japanese Imperial Government records of the United States;

(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

(3) submit a report to Congress, including the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

(d) FUNDING.—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

**SEC. 803. REQUIREMENT OF DISCLOSURE OF RECORDS.**

(a) RELEASE OF RECORDS.—Subject to subsections (b), (c), and (d), the Japanese Imperial Government Records Interagency Working Group shall release in their entirety Japanese Imperial Government records.

(b) EXEMPTIONS.—An agency head may exempt from release under subsection (a) specific information, that would—

(1) constitute an unwarranted invasion of personal privacy;

(2) reveal the identity of a confidential human source, or reveal information about an intelligence source or method when the unauthorized disclosure of that source or method would damage the national security interests of the United States;

(3) reveal information that would assist in the development or use of weapons of mass destruction;

(4) reveal information that would impair United States cryptologic systems or activities;

(5) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

(6) reveal United States military war plans that remain in effect;

(7) reveal information that would impair relations between the United States and a foreign government, or undermine ongoing diplomatic activities of the United States;

(8) reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services are authorized in the interest of national security;

(9) reveal information that would impair current national security emergency preparedness plans; or

(10) violate a treaty or other international agreement.

(c) APPLICATIONS OF EXEMPTIONS.—

(1) **IN GENERAL.**—In applying the exemptions provided in paragraphs (2) through (10) of subsection (b), there shall be a presumption that the public interest will be served by disclosure and release of the records of the Japanese Imperial Government. The exemption may be asserted only when the head of the agency that maintains the records determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) **APPLICATION OF TITLE 5.**—A determination by an agency head to apply an exemption provided in paragraphs (2) through (9) of subsection (b) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

(d) **RECORDS RELATED TO INVESTIGATIONS OR PROSECUTIONS.**—This section shall not apply to records—

(1) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

(2) solely in the possession, custody, or control of the Office of Special Investigations.

**SEC. 804. EXPEDITED PROCESSING OF REQUESTS FOR JAPANESE IMPERIAL GOVERNMENT RECORDS.**

For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any person who was persecuted in the manner described in section 802(a)(3) and who requests a Japanese Imperial Government record shall be deemed to have a compelling need for such record.

**SEC. 805. EFFECTIVE DATE.**

The provisions of this title shall take effect on the date that is 90 days after the date of the enactment of this Act.



**INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 2000**

PUBLIC LAW 106-120—December 3, 1999

AN ACT To authorize appropriations for fiscal year 2000 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 2000”.

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**TITLE III—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 303. DIPLOMATIC INTELLIGENCE SUPPORT CENTERS.**

(a) [Section 303(a) added section 115 to the National Security Act of 1947 (50 U.S.C. 401 et seq).]

(b) [Section 303(b) added the heading of section 115 to the table of contents of the National Security Act of 1947 (50 U.S.C. 401 note).]

**SEC. 304. PROTECTION OF IDENTITY OF RETIRED COVERT AGENTS.**

(a) [Section 304(a) amended section 606(4)(A) of the National Security Act of 1947 (50 U.S.C. 426(4)(A)).]

(b) PRISON SENTENCES FOR VIOLATIONS.—

(1) [Section 304(b)(1) added subsection (d) to section 601 of the National Security Act of 1947 (50 U.S.C. 421).]

(2) [Section 304(b)(2) amended section 601 of the National Security Act of 1947 (50 U.S.C. 421).]

**SEC. 305. ACCESS TO COMPUTERS AND COMPUTER DATA OF EXECUTIVE BRANCH EMPLOYEES WITH ACCESS TO CLASSIFIED INFORMATION.**

(a) [Section 305(a) amended section 801(a)(3) of the National Security Act of 1947 (50 U.S.C. 435(a)(3)).]

(b) [Section 305(b) amended section 804 of the National Security Act of 1947 (50 U.S.C. 438).]

(c) [50 U.S.C. 435 nt] APPLICABILITY.—The President shall modify the procedures required by section 801(a)(3) of the National Security Act of 1947 to take into account the amendment to that section made by subsection (a) of this section not later than 90 days after the date of the enactment of this Act.

**SEC. 306. NATURALIZATION OF CERTAIN PERSONS AFFILIATED WITH A COMMUNIST OR SIMILAR PARTY.**

[Section 306 amended section 313 of the Immigration and Nationality Act (8 U.S.C. 1424).]

**SEC. 307. TECHNICAL AMENDMENT.**

[Section 307 amended section 305(b)(2) of the Intelligence Authorization Act for Fiscal Year 1997 (Public Law 104-293; 110 Stat. 3465; 8 U.S.C. 1427 note).]

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**SEC. 313. [50 U.S.C. 403-8] REAFFIRMATION OF LONGSTANDING PROHIBITION AGAINST DRUG TRAFFICKING BY EMPLOYEES OF THE INTELLIGENCE COMMUNITY.**

(a) **FINDING.**—Congress finds that longstanding statutes, regulations, and policies of the United States prohibit employees, agents, and assets of the elements of the intelligence community, and of every other Federal department and agency, from engaging in the illegal manufacture, purchase, sale, transport, and distribution of drugs.

(b) **OBLIGATION OF EMPLOYEES OF INTELLIGENCE COMMUNITY.**—Any employee of the intelligence community having knowledge of a fact or circumstance that reasonably indicates that an employee, agent, or asset of an element of the intelligence community is involved in any activity that violates a statute, regulation, or policy described in subsection (a) shall report such knowledge to an appropriate official.

(c) **INTELLIGENCE COMMUNITY DEFINED.**—In this section, the term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

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## **TITLE IV—CENTRAL INTELLIGENCE AGENCY**

**SEC. 401. IMPROVEMENT AND EXTENSION OF CENTRAL SERVICES PROGRAM.**

(a) [Section 401(a) amended subsection (a) of section 21 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u).]

(b) [Section 401(b) amended subsection (c)(2) of section 21 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u).]

(c) [Section 401(c) amended subsection (f)(2)(A) of section 21 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u).]

(d) [Section 401(d) amended subsection (h)(1) of section 21 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u).]

**SEC. 402. EXTENSION OF CIA VOLUNTARY SEPARATION PAY ACT.**

(a) [Section 402(a) amended section 2(f) of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403-4 note).]

(b) [Section 402(a) amended section 2(i) of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403-4 note).]

## **TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

### **SEC. 501. PROTECTION OF OPERATIONAL FILES OF THE NATIONAL IMAGERY AND MAPPING AGENCY.**

(a) [Section 501(a)(1) added section 105B to the National Security Act of 1947 (50 U.S.C. 401 et seq.).]

(2) [Section 501(a)(2) added the heading of section 105B to the table of contents of the National Security Act of 1947 (50 U.S.C. 401 et seq.).]

(b) **[50 U.S.C. 403–5b] TREATMENT OF CERTAIN TRANSFERRED RECORDS.**—Any record transferred to the National Imagery and Mapping Agency from exempted operational files of the Central Intelligence Agency covered by section 701(a) of the National Security Act of 1947 (50 U.S.C. 431(a)) shall be placed in the operational files of the National Imagery and Mapping Agency that are established pursuant to section 105B of the National Security Act of 1947, as added by subsection (a).

### **SEC. 502. FUNDING FOR INFRASTRUCTURE AND QUALITY OF LIFE IMPROVEMENTS AT MENWITH HILL AND BAD AIBLING STATIONS.**

[Section 502 amended section 506(b) of the Intelligence Authorization Act for Fiscal Year 1996 (Public Law 104–93; 109 Stat. 974).]

## **TITLE VI—FOREIGN COUNTERINTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS**

### **SEC. 601. EXPANSION OF DEFINITION OF “AGENT OF A FOREIGN POWER” FOR PURPOSES OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

[Section 601 amended section 101(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(2)).]

### **SEC. 602. FEDERAL BUREAU OF INVESTIGATION REPORTS TO OTHER EXECUTIVE AGENCIES ON RESULTS OF COUNTERINTELLIGENCE ACTIVITIES.**

[Section 602 amended section 811(c)(2) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 108 Stat. 3455; 50 U.S.C. 402a(c)(2)).]

## **TITLE VII—NATIONAL COMMISSION FOR THE REVIEW OF THE NATIONAL RECONNAISSANCE OFFICE**

### **SEC. 701. [50 U.S.C. 401 nt] FINDINGS.**

Congress makes the following findings:

(1) Imagery and signals intelligence satellites are vitally important to the security of the Nation.

(2) The National Reconnaissance Office (in this title referred to as the “NRO”) and its predecessor organizations have

helped protect and defend the United States for more than 30 years.

(3) The end of the Cold War and the enormous growth in usage of information technology have changed the environment in which the intelligence community must operate. At the same time, the intelligence community has undergone significant changes in response to dynamic developments in strategy and in budgetary matters. The acquisition and maintenance of satellite systems are essential to providing timely intelligence to national policymakers and achieving information superiority for military leaders.

(4) There is a need to evaluate the roles and mission, organizational structure, technical skills, contractor relationships, use of commercial imagery, acquisition of launch vehicles, launch services, and launch infrastructure, mission assurance, acquisition authorities, and relationship to other agencies and departments of the Federal Government of the NRO in order to assure continuing success in satellite reconnaissance in the new millennium.

**SEC. 702. [50 U.S.C. 401 nt] NATIONAL COMMISSION FOR THE REVIEW OF THE NATIONAL RECONNAISSANCE OFFICE.**

(a) **ESTABLISHMENT.**—There is established a commission to be known as the “National Commission for the Review of the National Reconnaissance Office” (in this title referred to as the “Commission”).

(b) **COMPOSITION.**—The Commission shall be composed of 11 members, as follows:

(1) The Deputy Director of Central Intelligence for Community Management.

(2) Three members appointed by the Majority Leader of the Senate, in consultation with the Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and two from private life.

(3) Two members appointed by the Minority Leader of the Senate, in consultation with the Vice Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and one from private life.

(4) Three members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and two from private life.

(5) Two members appointed by the Minority Leader of the House of Representatives, in consultation with the ranking member of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and one from private life.

The Director of the National Reconnaissance Office shall be an ex officio member of the Commission.

(c) **MEMBERSHIP.**—(1) The individuals appointed as members of the Commission shall be individuals who are nationally recognized for expertise, knowledge, or experience in—

- (A) technical intelligence collection systems and methods;
- (B) research and development programs;
- (C) acquisition management;

(D) use of intelligence information by national policy-makers and military leaders; or

(E) the implementation, funding, or oversight of the national security policies of the United States.

(2) An official who appoints members of the Commission may not appoint an individual as a member of the Commission if, in the judgment of the official, such individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

(3) All members of the Commission appointed from private life shall possess an appropriate security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(d) CO-CHAIRS.—(1) The Commission shall have two co-chairs, selected from among the members of the Commission.

(2) One co-chair of the Commission shall be a member of the Democratic Party, and one co-chair shall be a member of the Republican Party.

(3) The individuals who serve as the co-chairs of the Commission shall be jointly agreed upon by the President, the Majority Leader of the Senate, the Minority Leader of the Senate, and Speaker of the House of Representatives, and the Minority Leader of the House of Representatives.

(e) APPOINTMENT; INITIAL MEETING.—(1) Members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act.

(2) The Commission shall hold its initial meeting on the date that is 60 days after the date of the enactment of this Act.

(f) MEETINGS; QUORUM; VACANCIES.—(1) After its initial meeting, the Commission shall meet upon the call of the co-chairs of the Commission.

(2) Six members of the Commission shall constitute a quorum for purposes of conducting business, except that two members of the Commission shall constitute a quorum for purposes of receiving testimony.

(3) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) If vacancies in the Commission occur on any day after 45 days after the date of the enactment of this Act, a quorum shall consist of a majority of the members of the Commission as of such day.

(g) ACTIONS OF COMMISSION.—(1) The Commission shall act by resolution agreed to by a majority of the members of the Commission voting and present.

(2) The Commission may establish panels composed of less than the full membership of the Commission for purposes of carrying out the duties of the Commission under this title. The actions of any 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.

(3) Any member, agent, or staff of the Commission may, if authorized by the co-chairs of the Commission, take any action which the Commission is authorized to take pursuant to this title.

**SEC. 703. [50 U.S.C. 401 nt] DUTIES OF COMMISSION.**

(a) IN GENERAL.—The duties of the Commission shall be—

(1) to conduct, until not later than the date on which the Commission submits the report under section 708(a), the review described in subsection (b); and

(2) to submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report on the results of the review.

(b) REVIEW.—The Commission shall review the current organization, practices, and authorities of the NRO, in particular with respect to—

- (1) roles and mission;
- (2) organizational structure;
- (3) technical skills;
- (4) contractor relationships;
- (5) use of commercial imagery;
- (6) acquisition of launch vehicles, launch services, and launch infrastructure, and mission assurance;
- (7) acquisition authorities; and
- (8) relationships with other agencies and departments of the Federal Government.

**SEC. 704. [50 U.S.C. 401 nt] POWERS OF COMMISSION.**

(a) IN GENERAL.—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member considers necessary.

(2) Subpoenas may be issued under paragraph (1)(B) under the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs.

(3) The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of a witness to comply with any subpoena or to testify when summoned under authority of this section.

(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, agency, bureau, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request of the co-chairs of the Commission. The Commission shall handle and protect all classified information

provided to it under this section in accordance with applicable statutes and regulations.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—(1) The Director of Central Intelligence shall provide to the Commission, on a non-reimbursable basis, such administrative services, funds, staff, facilities, and other support services as are necessary for the performance of the Commission's duties under this title.

(2) The Secretary of Defense may provide the Commission, on a nonreimbursable basis, with such administrative services, staff, and other support services as the Commission may request.

(3) In addition to the assistance set forth in paragraphs (1) and (2), other departments and agencies of the United States may provide the Commission such services, funds, facilities, staff, and other support as such departments and agencies consider advisable and as may be authorized by law.

(4) The Commission shall receive the full and timely cooperation of any official, department, or agency of the United States Government whose assistance is necessary for the fulfillment of the duties of the Commission under this title, including the provision of full and current briefings and analyses.

(e) PROHIBITION ON WITHHOLDING INFORMATION.—No department or agency of the Government may withhold information from the Commission on the grounds that providing the information to the Commission would constitute the unauthorized disclosure of classified information or information relating to intelligence sources or methods.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(g) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property in carrying out its duties under this title.

**SEC. 705. [50 U.S.C. 401 nt] STAFF OF COMMISSION.**

(a) IN GENERAL.—(1) The co-chairs of the Commission, in accordance with rules agreed upon by the Commission, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III or chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.

(2) Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) All staff of the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(b) CONSULTANT SERVICES.—(1) The Commission may procure the services of experts and consultants in accordance with section

3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(2) All experts and consultants employed by the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

**SEC. 706. [50 U.S.C. 401 nt] COMPENSATION AND TRAVEL EXPENSES.**

(a) COMPENSATION.—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission under this title.

(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay by reason of their service on the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

**SEC. 707. [50 U.S.C. 401 nt] TREATMENT OF INFORMATION RELATING TO NATIONAL SECURITY.**

(a) IN GENERAL.—(1) The Director of Central Intelligence shall assume responsibility for the handling and disposition of any information related to the national security of the United States that is received, considered, or used by the Commission under this title.

(2) Any information related to the national security of the United States that is provided to the Commission by a congressional intelligence committee may not be further provided or released without the approval of the chairman of such committee.

(b) ACCESS AFTER TERMINATION OF COMMISSION.—Notwithstanding any other provision of law, after the termination of the Commission under section 708, only the Members and designated staff of the congressional intelligence committees, the Director of Central Intelligence and the designees of the Director, and such other officials of the executive branch as the President may designate shall have access to information related to the national security of the United States that is received, considered, or used by the Commission.

**SEC. 708. [50 U.S.C. 401 nt] FINAL REPORT; TERMINATION.**

(a) FINAL REPORT.—Not later than November 1, 2000, the Commission shall submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report as required by section 703(a).

(b) TERMINATION.—(1) The Commission, and all the authorities of this title, shall terminate at the end of the 120-day period beginning on the date on which the final report under subsection (a) is transmitted to the congressional intelligence committees.

(2) The Commission may use the 120-day period referred to in paragraph (1) for the purposes of concluding its activities, including providing testimony to committees of Congress concerning the final report referred to in that paragraph and disseminating the report.

**SEC. 709. [50 U.S.C. 401 nt] ASSESSMENTS OF FINAL REPORT.**

Not later than 60 days after receipt of the final report under section 708(a), the Director of Central Intelligence and the Secretary of Defense shall each submit to the congressional intelligence committees an assessment by the Director or the Secretary, as the case may be, of the final report. Each assessment shall include such comments on the findings and recommendations contained in the final report as the Director or Secretary, as the case may be, considers appropriate.

**SEC. 710. [50 U.S.C. 401 nt] INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.**

(a) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission under this title.

(b) FREEDOM OF INFORMATION ACT.—The provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), shall not apply to the activities, records, and proceedings of the Commission under this title.

**SEC. 711. [50 U.S.C. 401 nt] FUNDING.**

(a) TRANSFER FROM NRO.—Of the amounts authorized to be appropriated by this Act for the National Reconnaissance Office, the Director of the National Reconnaissance Office shall transfer to the Director of Central Intelligence \$5,000,000 for purposes of the activities of the Commission under this title.

(b) AVAILABILITY IN GENERAL.—The Director of Central Intelligence shall make available to the Commission, from the amount transferred to the Director under subsection (a), such amounts as the Commission may require for purposes of the activities of the Commission under this title.

(c) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (b) shall remain available until expended.

**SEC. 712. [50 U.S.C. 401 nt] CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.**

In this title, the term “congressional intelligence committees” means the following:

- (1) The Select Committee on Intelligence of the Senate.
- (2) The Permanent Select Committee on Intelligence of the House of Representatives.

## **TITLE VIII—INTERNATIONAL NARCOTICS TRAFFICKING**

**SEC. 801. [21 U.S.C. 1901 nt] SHORT TITLE.**

This title may be cited as the “Foreign Narcotics Kingpin Designation Act”.

**SEC. 802. [21 U.S.C. 1901] FINDINGS AND POLICY.**

- (a) FINDINGS.—Congress makes the following findings:

(1) Presidential Decision Directive 42, issued on October 21, 1995, ordered agencies of the executive branch of the United States Government to, inter alia, increase the priority and resources devoted to the direct and immediate threat international crime presents to national security, work more closely with other governments to develop a global response to this threat, and use aggressively and creatively all legal means available to combat international crime.

(2) Executive Order No. 12978 of October 21, 1995, provides for the use of the authorities in the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.) to target and apply sanctions to four international narcotics traffickers and their organizations that operate from Colombia.

(3) IEEPA was successfully applied to international narcotics traffickers in Colombia and based on that successful case study, Congress believes similar authorities should be applied worldwide.

(4) There is a national emergency resulting from the activities of international narcotics traffickers and their organizations that threatens the national security, foreign policy, and economy of the United States.

(b) **POLICY.**—It shall be the policy of the United States to apply economic and other financial sanctions to significant foreign narcotics traffickers and their organizations worldwide to protect the national security, foreign policy, and economy of the United States from the threat described in subsection (a)(4).

**SEC. 803. [21 U.S.C. 1902] PURPOSE.**

The purpose of this title is to provide authority for the identification of, and application of sanctions on a worldwide basis to, significant foreign narcotics traffickers, their organizations, and the foreign persons who provide support to those significant foreign narcotics traffickers and their organizations, whose activities threaten the national security, foreign policy, and economy of the United States.

**SEC. 804. [21 U.S.C. 1903] PUBLIC IDENTIFICATION OF SIGNIFICANT FOREIGN NARCOTICS TRAFFICKERS AND REQUIRED REPORTS.**

(a) **PROVISION OF INFORMATION TO THE PRESIDENT.**—The Secretary of the Treasury, the Attorney General, the Secretary of Defense, the Secretary of State, and the Director of Central Intelligence shall consult among themselves and provide the appropriate and necessary information to enable the President to submit the report under subsection (b). This information shall also be provided to the Director of the Office of National Drug Control Policy.

(b) **PUBLIC IDENTIFICATION AND SANCTIONING OF SIGNIFICANT FOREIGN NARCOTICS TRAFFICKERS.**—Not later than June 1, 2000, and not later than June 1 of each year thereafter, the President shall submit a report to the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives; and to the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate—

- (1) identifying publicly the foreign persons that the President determines are appropriate for sanctions pursuant to this title; and
- (2) detailing publicly the President's intent to impose sanctions upon these significant foreign narcotics traffickers pursuant to this title.

The report required in this subsection shall not include information on persons upon which United States sanctions imposed under this title, or otherwise on account of narcotics trafficking, are already in effect.

(c) UNCLASSIFIED REPORT REQUIRED.—The report required by subsection (b) shall be submitted in unclassified form and made available to the public.

(d) CLASSIFIED REPORT.—(1) Not later than July 1, 2000, and not later than July 1 of each year thereafter, the President shall provide the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate with a report in classified form describing in detail the status of the sanctions imposed under this title, including the personnel and resources directed towards the imposition of such sanctions during the preceding fiscal year, and providing background information with respect to newly-identified significant foreign narcotics traffickers and their activities.

(2) Such classified report shall describe actions the President intends to undertake or has undertaken with respect to such significant foreign narcotics traffickers.

(3) The report required under this subsection is in addition to the President's obligations to keep the intelligence committees of Congress fully and currently informed pursuant to the provisions of the National Security Act of 1947.

(e) EXCLUSION OF CERTAIN INFORMATION.—

(1) INTELLIGENCE.—Notwithstanding any other provision of this section, the reports described in subsections (b) and (d) shall not disclose the identity of any person, if the Director of Central Intelligence determines that such disclosure could compromise an intelligence operation, activity, source, or method of the United States.

(2) LAW ENFORCEMENT.—Notwithstanding any other provision of this section, the reports described in subsections (b) and (d) shall not disclose the name of any person if the Attorney General, in coordination as appropriate with the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, and the Secretary of the Treasury, determines that such disclosure could reasonably be expected to—

(A) compromise the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(B) jeopardize the integrity or success of an ongoing criminal investigation or prosecution;

(C) endanger the life or physical safety of any person; or

(D) cause substantial harm to physical property.

(f) NOTIFICATION REQUIRED.—(1) Whenever either the Director of Central Intelligence or the Attorney General makes a determina-

tion under subsection (e), the Director of Central Intelligence or the Attorney General shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and explain the reasons for such determination.

(2) The notification required under this subsection shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate not later than July 1, 2000, and on an annual basis thereafter.

(g) DETERMINATIONS NOT TO APPLY SANCTIONS.—(1) The President may waive the application to a significant foreign narcotics trafficker of any sanction authorized by this title if the President determines that the application of sanctions under this title would significantly harm the national security of the United States.

(2) When the President determines not to apply sanctions that are authorized by this title to any significant foreign narcotics trafficker, the President shall notify the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives, and the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate not later than 21 days after making such determination.

(h) CHANGES IN DETERMINATIONS TO IMPOSE SANCTIONS.—

(1) ADDITIONAL DETERMINATIONS.—(A) If at any time after the report required under subsection (b) the President finds that a foreign person is a significant foreign narcotics trafficker and such foreign person has not been publicly identified in a report required under subsection (b), the President shall submit an additional public report containing the information described in subsection (b) with respect to such foreign person to the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives, and the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate.

(B) The President may apply sanctions authorized under this title to the significant foreign narcotics trafficker identified in the report submitted under subparagraph (A) as if the trafficker were originally included in the report submitted pursuant to subsection (b) of this section.

(C) The President shall notify the Secretary of the Treasury of any determination made under this paragraph.

(2) REVOCATION OF DETERMINATION.—(A) Whenever the President finds that a foreign person that has been publicly identified as a significant foreign narcotics trafficker in the report required under subsection (b) or this subsection no longer engages in those activities for which sanctions under this title may be applied, the President shall issue public notice of such a finding.

(B) Not later than the date of the public notice issued pursuant to subparagraph (A), the President shall notify, in writing and in classified or unclassified form, the Permanent Select

Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives, and the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate of actions taken under this paragraph and a description of the basis for such actions.

**SEC. 805. [21 U.S.C. 1904] BLOCKING ASSETS AND PROHIBITING TRANSACTIONS.**

(a) **APPLICABILITY OF SANCTIONS.**—A significant foreign narcotics trafficker publicly identified in the report required under subsection (b) or (h)(1) of section 804 and foreign persons designated by the Secretary of the Treasury pursuant to subsection (b) of this section shall be subject to any and all sanctions as authorized by this title. The application of sanctions on any foreign person pursuant to subsection (b) or (h)(1) of section 804 or subsection (b) of this section shall remain in effect until revoked pursuant to section 804(h)(2) or subsection (e)(1)(A) of this section or waived pursuant to section 804(g)(1).

(b) **BLOCKING OF ASSETS.**—Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this title, and notwithstanding any contract entered into or any license or permit granted prior to the date on which the President submits the report required under subsection (b) or (h)(1) of section 804, there are blocked as of such date, and any date thereafter, all such property and interests in property within the United States, or within the possession or control of any United States person, which are owned or controlled by—

(1) any significant foreign narcotics trafficker publicly identified by the President in the report required under subsection (b) or (h)(1) of section 804;

(2) any foreign person that the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, designates as materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a significant foreign narcotics trafficker so identified in the report required under subsection (b) or (h)(1) of section 804, or foreign persons designated by the Secretary of the Treasury pursuant to this subsection;

(3) any foreign person that the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, designates as owned, controlled, or directed by, or acting for or on behalf of, a significant foreign narcotics trafficker so identified in the report required under subsection (b) or (h)(1) of section 804, or foreign persons designated by the Secretary of the Treasury pursuant to this subsection; and

(4) any foreign person that the Secretary of the Treasury, in consultation with the Attorney General, the Director of Cen-

tral Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, designates as playing a significant role in international narcotics trafficking.

(c) **PROHIBITED TRANSACTIONS.**—Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this title, and notwithstanding any contract entered into or any license or permit granted prior to the date on which the President submits the report required under subsection (b) or (h)(1) of section 804, the following transactions are prohibited:

(1) Any transaction or dealing by a United States person, or within the United States, in property or interests in property of any significant foreign narcotics trafficker so identified in the report required pursuant to subsection (b) or (h)(1) of section 804, and foreign persons designated by the Secretary of the Treasury pursuant to subsection (b) of this section.

(2) Any transaction or dealing by a United States person, or within the United States, that evades or avoids, or has the effect of evading or avoiding, and any endeavor, attempt, or conspiracy to violate, any of the prohibitions contained in this title.

(d) **LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES NOT AFFECTED.**—Nothing in this title prohibits or otherwise limits the authorized law enforcement or intelligence activities of the United States, or the law enforcement activities of any State or subdivision thereof.

(e) **IMPLEMENTATION.**—(1) The Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, is authorized to take such actions as may be necessary to carry out this title, including—

(A) making those designations authorized by paragraphs (2), (3), and (4) of subsection (b) of this section and revocation thereof;

(B) promulgating rules and regulations permitted under this title; and

(C) employing all powers conferred on the Secretary of the Treasury under this title.

(2) Each agency of the United States shall take all appropriate measures within its authority to carry out the provisions of this title.

(3) Section 552(a)(3) of title 5, United States Code, shall not apply to any record or information obtained or created in the implementation of this title.

**SEC. 806. [21 U.S.C. 1905] AUTHORITIES.**

(a) **IN GENERAL.**—To carry out the purposes of this title, the Secretary of the Treasury may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(1) investigate, regulate, or prohibit—

(A) any transactions in foreign exchange, currency, or securities; and

(B) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interests of any foreign country or a national thereof; and

(2) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent, or prohibit any acquisition, holding, withholding, use, transfer, withdrawal, transportation, placement into foreign or domestic commerce of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States.

(b) **RECORDKEEPING.**—Pursuant to subsection (a), the Secretary of the Treasury may require recordkeeping, reporting, and production of documents to carry out the purposes of this title.

(c) **DEFENSES.**—

(1) Full and actual compliance with any regulation, order, license, instruction, or direction issued under this title shall be a defense in any proceeding alleging a violation of any of the provisions of this title.

(2) No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to, and in reliance on this title, or any regulation, instruction, or direction issued under this title.

(d) **RULEMAKING.**—The Secretary of the Treasury may issue such other regulations or orders, including regulations prescribing recordkeeping, reporting, and production of documents, definitions, licenses, instructions, or directions, as may be necessary for the exercise of the authorities granted by this title.

**SEC. 807. [21 U.S.C. 1906] ENFORCEMENT.**

(a) **CRIMINAL PENALTIES.**—(1) Whoever willfully violates the provisions of this title, or any license rule, or regulation issued pursuant to this title, or willfully neglects or refuses to comply with any order of the President issued under this title shall be—

(A) imprisoned for not more than 10 years,

(B) fined in the amount provided in title 18, United States Code, or, in the case of an entity, fined not more than \$10,000,000,

or both.

(2) Any officer, director, or agent of any entity who knowingly participates in a violation of the provisions of this title shall be imprisoned for not more than 30 years, fined not more than \$5,000,000, or both.

(b) **CIVIL PENALTIES.**—A civil penalty not to exceed \$1,000,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this title.

(c) **JUDICIAL REVIEW OF CIVIL PENALTY.**—Any penalty imposed under subsection (b) shall be subject to judicial review only to the extent provided in section 702 of title 5, United States Code.

**SEC. 808. [21 U.S.C. 1907] DEFINITIONS.**

As used in this title:

(1) ENTITY.—The term “entity” means a partnership, joint venture, association, corporation, organization, network, group, or subgroup, or any form of business collaboration.

(2) FOREIGN PERSON.—The term “foreign person” means any citizen or national of a foreign state or any entity not organized under the laws of the United States, but does not include a foreign state.

(3) NARCOTICS TRAFFICKING.—The term “narcotics trafficking” means any illicit activity to cultivate, produce, manufacture, distribute, sell, finance, or transport narcotic drugs, controlled substances, or listed chemicals, or otherwise endeavor or attempt to do so, or to assist, abet, conspire, or collude with others to do so.

(4) NARCOTIC DRUG; CONTROLLED SUBSTANCE; LISTED CHEMICAL.—The terms “narcotic drug”, “controlled substance”, and “listed chemical” have the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(5) PERSON.—The term “person” means an individual or entity.

(6) UNITED STATES PERSON.—The term “United States person” means any United States citizen or national, permanent resident alien, an entity organized under the laws of the United States (including its foreign branches), or any person within the United States.

(7) SIGNIFICANT FOREIGN NARCOTICS TRAFFICKER.—The term “significant foreign narcotics trafficker” means any foreign person that plays a significant role in international narcotics trafficking, that the President has determined to be appropriate for sanctions pursuant to this title, and that the President has publicly identified in the report required under subsection (b) or (h)(1) of section 804.

**SEC. 809. EXCLUSION OF PERSONS WHO HAVE BENEFITED FROM IL-LICIT ACTIVITIES OF DRUG TRAFFICKERS.**

[Section 809 amended section 212(a)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(C)).]

**SEC. 810. [21 U.S.C. 1908] JUDICIAL REVIEW COMMISSION ON FOREIGN ASSET CONTROL.**

(a) ESTABLISHMENT.—There is established a commission to be known as the “Judicial Review Commission on Foreign Asset Control” (in this section referred to as the “Commission”).

(b) MEMBERSHIP AND PROCEDURAL MATTERS.—(1) The Commission shall be composed of five members, as follows:

(A) One member shall be appointed by the Chairman of the Select Committee on Intelligence of the Senate.

(B) One member shall be appointed by the Vice Chairman of the Select Committee on Intelligence of the Senate.

(C) One member shall be appointed by the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives.

(D) One member shall be appointed by the Ranking Minority Member of the Permanent Select Committee on Intelligence of the House of Representatives.

(E) One member shall be appointed jointly by the members appointed under subparagraphs (A) through (D).

(2) Each member of the Commission shall, for purposes of the activities of the Commission under this section, possess or obtain an appropriate security clearance in accordance with applicable laws and regulations regarding the handling of classified information.

(3) The members of the Commission shall choose the chairman of the Commission from among the members of the Commission.

(4) The members of the Commission shall establish rules governing the procedures and proceedings of the Commission.

(c) DUTIES.—The Commission shall have as its duties the following:

(1) To conduct a review of the current judicial, regulatory, and administrative authorities relating to the blocking of assets of foreign persons by the United States Government.

(2) To conduct a detailed examination and evaluation of the remedies available to United States persons affected by the blocking of assets of foreign persons by the United States Government.

(d) POWERS.—(1) The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this section.

(2) The Commission may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this section. Each such department, agency, bureau, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request of the chairman of the Commission. The Commission shall handle and protect all classified information provided to it under this section in accordance with applicable statutes and regulations.

(3) The Attorney General and the Secretary of the Treasury shall provide to the Commission, on a nonreimbursable basis, such administrative services, funds, facilities, and other support services as are necessary for the performance of the Commission's duties under this section.

(4) The Commission shall receive the full and timely cooperation of any official, department, or agency of the United States Government whose assistance is necessary for the fulfillment of the duties of the Commission under this section, including the provision of full and current briefings and analyses.

(5) No department or agency of the Government may withhold information from the Commission on the grounds that providing the information to the Commission would constitute the unauthorized disclosure of classified information or information relating to intelligence sources or methods.

(6) The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(e) STAFF.—(1) Subject to paragraph (2), the chairman of the Commission, in accordance with rules agreed upon by the Commis-

sion, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III or chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.

(2)(A) Any employee of a department or agency referred to in subparagraph (B) may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(B) The departments and agencies referred to in this subparagraph are as follows:

- (i) The Department of Justice.
- (ii) The Department of the Treasury.
- (iii) The Central Intelligence Agency.

(3) All staff of the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(f) COMPENSATION AND TRAVEL EXPENSES.—(1)(A) Except as provided in subparagraph (B), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission under this section.

(B) Members of the Commission who are officers or employees of the United States shall receive no additional pay by reason of their service on the Commission.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(g) REPORT.—(1) Not later than 1 year after the date of the enactment of this Act, the Commissions shall submit to the committees of Congress referred to in paragraph (4) a report on the activities of the Commission under this section, including the findings, conclusions, and recommendations, if any, of the Commission as a result of the review under subsection (c)(1) and the examination and evaluation under subsection (c)(2).

(2) The report under paragraph (1) shall include any additional or dissenting views of a member of the Commission upon the request of the member.

(3) The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(4) The committees of Congress referred to in this paragraph are the following:

(A) The Select Committee on Intelligence and the Committees on Foreign Relations and the Judiciary of the Senate.

(B) The Permanent Select Committee on Intelligence and the Committees on International Relations and the Judiciary of the House of Representatives.

(h) **TERMINATION.**—The Commission shall terminate at the end of the 60-day period beginning on the date on which the report required by subsection (g) is submitted to the committees of Congress referred to in that subsection.

(i) **INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.**—

(1) The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission under this section.

(2) The provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), shall not apply to the activities, records, and proceedings of the Commission under this title.

(j) **FUNDING.**—The Attorney General shall, from amounts authorized to be appropriated to the Attorney General by this Act, make available to the Commission \$1,000,000 for purposes of the activities of the Commission under this section. Amounts made available to the Commission under the preceding sentence shall remain available until expended.

**SEC. 811. [21 U.S.C. 1901 nt] EFFECTIVE DATE.**

This title shall take effect on the date of the enactment of this Act.



**INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1999**

PUBLIC LAW 105-272—October 20, 1998

AN ACT To authorize appropriations for fiscal year 1999 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1999”.

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**TITLE III—GENERAL PROVISIONS**

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**SEC. 305. MODIFICATION OF NATIONAL SECURITY EDUCATION PROGRAM.**

[Section 305(a) amended sections 801, 802, 803, and 806 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.).]

[Section 305(b) amended section 803(b)(6) the David L. Boren National Security Education Act of 1991 of such Act (50 U.S.C. 1903(b)(6)).]

**SEC. 306. REQUIREMENT TO DIRECT COMPETITIVE ANALYSIS OF ANALYTICAL PRODUCTS HAVING NATIONAL IMPORTANCE.**

[Section 306 amended section 102(g)(2) of the National Security Act of 1947 (50 U.S.C. 403(g)(2)).]

**SEC. 307. ANNUAL REPORTS TO CONGRESS.**

[Section 307(a) added section 114 to title I of the National Security Act of 1947 (50 U.S.C. 401 et seq.).]

[Section 307(b) added the heading of setion 114 to the table of contents of the National Security Act of 1947 (50 U.S.C. 401 et seq.).]

(c) **[50 U.S.C. 404i note] DATE FOR FIRST REPORT ON COOPERATION WITH CIVILIAN LAW ENFORCEMENT AGENCIES.**—The first report under section 114(a) of the National Security Act of 1947, as added by subsection (a), shall be submitted not later than December 31, 1999.

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**SEC. 309. [50 U.S.C. 403-1 note] DESIGNATION OF HEADQUARTERS COMPOUND OF CENTRAL INTELLIGENCE AGENCY AS THE GEORGE BUSH CENTER FOR INTELLIGENCE.**

(a) DESIGNATION.—The headquarters compound of the Central Intelligence Agency located in Langley, Virginia, shall be known and designated as the “George Bush Center for Intelligence”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the headquarters compound referred to in subsection (a) shall be deemed to be a reference to the “George Bush Center for Intelligence”.

## **TITLE IV—CENTRAL INTELLIGENCE AGENCY**

**SEC. 401. ENHANCED PROTECTIVE AUTHORITY FOR CIA PERSONNEL AND FAMILY MEMBERS.**

[Section 401 amended section 5(a)(4) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(4)).]

**SEC. 402. AUTHORITY FOR RETROACTIVE PAYMENT OF SPECIFIED SPECIAL PAY ALLOWANCE.**

(a) AUTHORIZATION.—The Director of Central Intelligence may make payments with respect to the period beginning on January 30, 1998, and ending on April 7, 1998, of the special pay allowance described in the Central Intelligence Agency notice dated April 7, 1998 (notwithstanding the otherwise applicable effective date for such payments of April 7, 1998).

(b) FUNDS AVAILABLE.—Payments authorized by subsection (a) may be made from amounts appropriated for the Central Intelligence Agency for fiscal year 1998 or for fiscal year 1999.

**SEC. 403. TECHNICAL AMENDMENTS.**

(a) [Section 403(a) amended section 5(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(1)).]

(b) [Section 403(b) amended section 201(c) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011(c)).]

## **TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

**SEC. 501. EXTENSION OF AUTHORITY TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLECTION ACTIVITIES.**

[Section 501 amended section 431(a) of title 10, United States Code.]

## **TITLE VI—FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS**

### **SEC. 601. PEN REGISTERS AND TRAP AND TRACE DEVICES IN FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.**

[Section 601 redesignated title IV as title VI and section 401 as section 601, respectively; and added a new title IV to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).]

### **SEC. 602. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.**

[Section 602 added a new title V to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).]

### **SEC. 603. CONFORMING AND CLERICAL AMENDMENTS.**

(a) [Section 601 amended the Foreign Intelligence Surveillance Act of 1978.]

(b) [Section 603(b) amended the table of contents at the beginning of the Foreign Intelligence Surveillance Act of 1978.]

### **SEC. 604. WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION REQUIREMENTS.**

(a) [Section 604(a) amended section 2518(11)(b) of title 18, United States Code.]

(b) [Section 604(b) amended section 2518(12) of title 18, United States Code.]

### **SEC. 605. AUTHORITY OF ATTORNEY GENERAL TO ACCEPT VOLUNTARY SERVICES.**

[Section 605 amended section 524(d)(1) of title 28, United States Code.]

## **TITLE VII—WHISTLEBLOWER PROTECTION FOR INTELLIGENCE COMMUNITY EMPLOYEES REPORTING URGENT CONCERNS TO CONGRESS**

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### **SEC. 702. PROTECTION OF INTELLIGENCE COMMUNITY EMPLOYEES WHO REPORT URGENT CONCERNS TO CONGRESS.**

(a) [Section 702(a) added a new paragraph (5) to subsection (d) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q).]

(b) [Section 702(b) added a new section 8H to the Inspector General Act of 1978 (5 U.S.C. App.) and redesignated section 8H of that Act as section 8I.]



**INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1998**

PUBLIC LAW 105-107—November 20, 1997

AN ACT To authorize appropriations for fiscal year 1998 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1998”.

\* \* \* \* \*

**TITLE III—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 303. DETAIL OF INTELLIGENCE COMMUNITY PERSONNEL.**

(a) [Section 303(a) added section 113 to the National Security Act of 1947 (50 U.S.C. 404h).]

(b) [Section 303(b) redesignated sections 120, 121, and 110 of the National Security Act of 1947 as sections 110, 111, and 112 (50 U.S.C. 401 et seq.).]

(c) [Section 303(c) amended the table of contents in the first section of the National Security Act of 1947 (50 U.S.C. 401 et seq.) by repealing sections 120, 121, and 110 and inserting sections 110, 111, 112, and 113.]

(d) [50 U.S.C. 404h nt] **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to an employee on detail on or after January 1, 1997.

**SEC. 304. EXTENSION OF APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES.**

[Section 304 amended section 905 of the National Security Act of 1947 (50 U.S.C. 441d).]

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**SEC. 307. [22 U.S.C. 2715a] PROVISION OF INFORMATION ON CERTAIN VIOLENT CRIMES ABROAD TO VICTIMS AND VICTIMS' FAMILIES.**

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that—  
(1) it is in the national interests of the United States to provide information regarding the killing, abduction, torture,

or other serious mistreatment of United States citizens abroad to the victims of such crimes, or the families of victims of such crimes if they are United States citizens; and

(2) the provision of such information is sufficiently important that the discharge of the responsibility for identifying and disseminating such information should be vested in a cabinet-level officer of the United States Government.

(b) RESPONSIBILITY.—The Secretary of State shall take appropriate actions to ensure that the United States Government takes all appropriate actions to—

(1) identify promptly information (including classified information) in the possession of the departments and agencies of the United States Government regarding the killing, abduction, torture, or other serious mistreatment of United States citizens abroad; and

(2) subject to subsection (c), promptly make such information available to—

(A) the victims of such crimes; or

(B) when appropriate, the family members of the victims of such crimes if such family members are United States citizens.

(c) LIMITATIONS.—The Secretary shall work with the heads of appropriate departments and agencies of the United States Government in order to ensure that information relevant to a crime covered by subsection (b) is promptly reviewed and, to the maximum extent practicable, without jeopardizing sensitive sources and methods or other vital national security interests, or without jeopardizing an on-going criminal investigation or proceeding, made available under that subsection unless such disclosure is specifically prohibited by law.

**SEC. 308. [50 U.S.C. 402a nt] ANNUAL REPORTS ON INTELLIGENCE ACTIVITIES OF THE PEOPLE'S REPUBLIC OF CHINA.**

(a) REPORT TO CONGRESS.—The Director of Central Intelligence and the Director of the Federal Bureau of Investigation, jointly and in consultation with the heads of other appropriate Federal agencies, including the National Security Agency and the Departments of Defense, Justice, Treasury, and State, shall prepare and transmit to Congress on an annual basis a report on intelligence activities of the People's Republic of China directed against or affecting the interests of the United States.

(b) DELIVERY OF REPORT.—The Director of Central Intelligence and the Director of the Federal Bureau of Investigation shall jointly transmit classified and unclassified versions of the report to the Speaker and Minority leader of the House of Representatives, the Majority and Minority leaders of the Senate, the Chairman and Ranking Member of the Permanent Select Committee on Intelligence of the House of Representatives, and the Chairman and Vice-Chairman of the Select Committee on Intelligence of the Senate.

(c) SUBMITTAL DATE OF REPORT TO LEADERSHIP OF CONGRESSIONAL INTELLIGENCE COMMITTEES.—The date each year for the submittal to the Chairman and Ranking Member of the Permanent Select Committee on Intelligence of the House of Representatives and the Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate of the report required by subsection (a)

shall be the date provided in section 507 of the National Security Act of 1947.

**SEC. 309. [50 U.S.C. 403-3 nt] STANDARDS FOR SPELLING OF FOREIGN NAMES AND PLACES AND FOR USE OF GEOGRAPHIC COORDINATES.**

(a) SURVEY OF CURRENT STANDARDS.—

(1) SURVEY.—The Director of Central Intelligence shall carry out a survey of current standards for the spelling of foreign names and places, and the use of geographic coordinates for such places, among the elements of the intelligence community.

(2) REPORT.—Not later than 90 days after the date of enactment of this Act, the Director shall submit to the congressional intelligence committees a report on the survey carried out under paragraph (1). The report shall be submitted in unclassified form, but may include a classified annex.

(b) GUIDELINES.—

(1) ISSUANCE.—Not later than 180 days after the date of enactment of this Act, the Director shall issue guidelines to ensure the use of uniform spelling of foreign names and places and the uniform use of geographic coordinates for such places. The guidelines shall apply to all intelligence reports, intelligence products, and intelligence databases prepared and utilized by the elements of the intelligence community.

(2) BASIS.—The guidelines under paragraph (1) shall, to the maximum extent practicable, be based on current United States Government standards for the transliteration of foreign names, standards for foreign place names developed by the Board on Geographic Names, and a standard set of geographic coordinates.

(3) SUBMITTAL TO CONGRESS.—The Director shall submit a copy of the guidelines to the congressional intelligence committees.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means the following:

(1) The Select Committee on Intelligence of the Senate.

(2) The Permanent Select Committee on Intelligence of the House of Representatives.

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**SEC. 311. AMENDMENTS TO FAIR CREDIT REPORTING ACT.**

(a) [Section 311(a) added paragraph (4) to section 604(b) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)).]

(b) [Section 311(b) added paragraph (3) to section 607(e) of the Fair Credit Reporting Act (15 U.S.C. 1681e(e)).]

(c) [15 U.S.C. 1681b nt] EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if such amendments had been included in chapter 1 of subtitle D of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 as of the date of the enactment of such Act.

## TITLE IV—CENTRAL INTELLIGENCE AGENCY

### SEC. 401. MULTIYEAR LEASING AUTHORITY.

(a) [Section 401(a) amended section 5 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f).]

(b) [50 U.S.C. 403f nt]EFFECTIVE DATE.—The amendments made by subsection (a) apply to multiyear leases entered into under section 5 of the Central Intelligence Agency Act of 1949, as so amended, on or after October 1, 1997.

### SEC. 402. SUBPOENA AUTHORITY FOR THE INSPECTOR GENERAL OF THE CENTRAL INTELLIGENCE AGENCY.

(a) [Section 402(a) amended section 17(e) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q).]

(b) [Section 402(b) amended section 17(b)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q).]

### SEC. 403. CIA CENTRAL SERVICES PROGRAM.

(a) [Section 403(a) added section 21 to the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.).]

(b) AVAILABILITY OF FUNDS.—Of the amount appropriated pursuant to the authorization of appropriations in section 101, \$2,000,000 shall be available for deposit in the Central Services Working Capital Fund established by section 21(c) of the Central Intelligence Agency Act of 1949, as added by subsection (a).

### SEC. 404. PROTECTION OF CIA FACILITIES.

[Section 404 amended section 15(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o).]

### SEC. 405. ADMINISTRATIVE LOCATION OF THE OFFICE OF THE DIRECTOR OF CENTRAL INTELLIGENCE.

[Section 405 added paragraph (4) to section 102(e) of the National Security Act of 1947 (50 U.S.C. 403(e)).]

## TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

### SEC. 501. AUTHORITY TO AWARD ACADEMIC DEGREE OF BACHELOR OF SCIENCE IN INTELLIGENCE.

(a) [Section 501(a) amended section 2161 of title 10, United States Code.]

(b) [Section 501(a) amended section 2161 in the table of sections at the beginning of chapter 108 of title 10, United States Code.]

### SEC. 502. FUNDING FOR INFRASTRUCTURE AND QUALITY OF LIFE IMPROVEMENTS AT MENWITH HILL AND BAD AIBLING STATIONS.

[Section 502 amended section 506(b) of the Intelligence Authorization Act for Fiscal Year 1996 (Public Law 104-93; 109 Stat. 974).]

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**SEC. 503. UNAUTHORIZED USE OF NAME, INITIALS, OR SEAL OF NATIONAL RECONNAISSANCE OFFICE.**

(a) [Section 503(a) added section 425 to chapter 21 of title 10, United States Code.]

(b) [Section 503(b) transferred subsection (b) of 202 of title 10, United States Code, to the end of section 425.]

(c) [Section 503(c) repealed sections 202 and 445 of title 10, United States Code.]

(d) [Section 503(d) amended the table of sections at the beginning of subchapter II of chapter 8, the table of sections at the beginning of subchapter I of chapter 21, and the table of sections at the beginning of subchapter I of chapter 22 of title 10, United States Code.]



**INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1997**

PUBLIC LAW 104-293—October 11, 1996

AN ACT To authorize appropriations for fiscal year 1997 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1997”.

\* \* \* \* \*

**TITLE III—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 304. APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES.**

[Section 304 amended section 905 of the National Security Act of 1947 (50 U.S.C. 441d).]

**SEC. 305. [8 U.S.C. 1427] EXPEDITED NATURALIZATION.**

(a) IN GENERAL.—With the approval of the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration and Naturalization, an applicant described in subsection (b) and otherwise eligible for naturalization may be naturalized without regard to the residence and physical presence requirements of section 316(a) of the Immigration and Nationality Act, or to the prohibitions of section 313 of such Act, and no residence within a particular State or district of the Immigration and Naturalization Service in the United States shall be required.

(b) ELIGIBLE APPLICANT.—An applicant eligible for naturalization under this section is the spouse or child of a deceased alien whose death resulted from the intentional and unauthorized disclosure of classified information regarding the alien's participation in the conduct of United States intelligence activities and who—

(1) has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least one year prior to naturalization; and

(2) is not described in clauses (i) through (iv) of section 241(b)(3)(B) of such Act.

(c) ADMINISTRATION OF OATH.—An applicant for naturalization under this section may be administered the oath of allegiance

under section 337(a) of the Immigration and Nationality Act by the Attorney General or any district court of the United States, without regard to the residence of the applicant. Proceedings under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods, and activities.

(d) DEFINITIONS.—For purposes of this section—

(1) the term “child” means a child as defined in subparagraphs (A) through (E) of section 101(b)(1) of the Immigration and Nationality Act, without regard to age or marital status; and

(2) the term “spouse” means the wife or husband of a deceased alien referred to in subsection (b) who was married to such alien during the time the alien participated in the conduct of United States intelligence activities.

\* \* \* \* \*

**SEC. 308. RESTRICTIONS ON INTELLIGENCE SHARING WITH THE UNITED NATIONS.**

(a) [Section 308(a) added section 110 to the National Security Act of 1947 (50 U.S.C. 404e).]

(b) [Section 308(b) added section 110 to the table of contents for the National Security Act of 1947.]

**SEC. 309. [50 U.S.C. 403-7] PROHIBITION ON USING JOURNALISTS AS AGENTS OR ASSETS.**

(a) POLICY.—It is the policy of the United States that an element of the Intelligence Community may not use as an agent or asset for the purposes of collecting intelligence any individual who—

(1) is authorized by contract or by the issuance of press credentials to represent himself or herself, either in the United States or abroad, as a correspondent of a United States news media organization; or

(2) is officially recognized by a foreign government as a representative of a United States media organization.

(b) WAIVER.—Pursuant to such procedures as the President may prescribe, the President or the Director of Central Intelligence may waive subsection (a) in the case of an individual if the President or the Director, as the case may be, makes a written determination that the waiver is necessary to address the overriding national security interest of the United States. The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate shall be notified of any waiver under this subsection.

(c) VOLUNTARY COOPERATION.—Subsection (a) shall not be construed to prohibit the voluntary cooperation of any person who is aware that the cooperation is being provided to an element of the United States Intelligence Community.

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## TITLE IV—CENTRAL INTELLIGENCE AGENCY

**SEC. 401. ELIMINATION OF DOUBLE SURCHARGE ON CENTRAL INTELLIGENCE AGENCY RELATING TO EMPLOYEES WHO RETIRE OR RESIGN IN FISCAL YEARS 1998 OR 1999 AND WHO RECEIVE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

[Section 401 amended section 2(i) of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4 note).]

**SEC. 402. [50 U.S.C. 403–4 nt] POST-EMPLOYMENT RESTRICTIONS.**

(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the Director of Central Intelligence shall prescribe regulations requiring each employee of the Central Intelligence Agency designated by the Director for such purpose to sign a written agreement restricting the activities of the employee upon ceasing employment with the Central Intelligence Agency. The Director may designate a group or class of employees for such purpose.

(b) **AGREEMENT ELEMENTS.**—The regulations shall provide that an agreement contain provisions specifying that the employee concerned not represent or advise the government, or any political party, of any foreign country during the three-year period beginning on the cessation of the employee's employment with the Central Intelligence Agency unless the Director determines that such representation or advice would be in the best interests of the United States.

(c) **DISCIPLINARY ACTIONS.**—The regulations shall specify appropriate disciplinary actions (including loss of retirement benefits) to be taken against any employee determined by the Director of Central Intelligence to have violated the agreement of the employee under this section.

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## TITLE VI—FEDERAL BUREAU OF INVESTIGATION

**SEC. 601. ACCESS TO TELEPHONE RECORDS.**

(a) [Section 601(a) amended section 2709(b)(1) of title 18, United States Code.]

(b) [Section 601(b) amended section 2703(c)(1)(C) of title 18, United States Code.]

(c) [Section 601(c) amended section 2707 of title 18, United States Code.]

## TITLE VII—COMBATting PROLIFERATION

**SEC. 701. [50 U.S.C. 2301 nt] SHORT TITLE.**

This title may be cited as the “Combatting Proliferation of Weapons of Mass Destruction Act of 1996”.

## **Subtitle A—Assessment of Organization and Structure of Government for Combatting Proliferation**

### **SEC. 711. [50 U.S.C. 2351 nt] ESTABLISHMENT OF COMMISSION.**

(a) **ESTABLISHMENT.**—There is established a commission to be known as the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction (in this subtitle referred to as the “Commission”).

(b) **MEMBERSHIP.**—The Commission shall be composed of eight members of whom—

- (1) four shall be appointed by the President;
- (2) one shall be appointed by the Majority Leader of the Senate;
- (3) one shall be appointed by the Minority Leader of the Senate;
- (4) one shall be appointed by the Speaker of the House of Representatives; and
- (5) one shall be appointed by the Minority Leader of the House of Representatives.

(c) **QUALIFICATIONS OF MEMBERS.**—(1) To the maximum extent practicable, the individuals appointed as members of the Commission shall be individuals who are nationally recognized for expertise regarding—

- (A) the nonproliferation of weapons of mass destruction;
- (B) the efficient and effective implementation of United States nonproliferation policy; or
- (C) the implementation, funding, or oversight of the national security policies of the United States.

(2) An official who appoints members of the Commission may not appoint an individual as a member if, in the judgment of the official, the individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

(d) **PERIOD OF APPOINTMENT; VACANCIES.**—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) **INITIAL MEETING.**—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(f) **QUORUM.**—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) **CHAIRMAN AND VICE CHAIRMAN.**—The Commission shall select a Chairman and Vice Chairman from among its members.

(h) **MEETINGS.**—The Commission shall meet at the call of the Chairman.

### **SEC. 712. [50 U.S.C. 2351 nt] DUTIES OF COMMISSION.**

(a) **STUDY.**—

- (1) **IN GENERAL.**—The Commission shall carry out a thorough study of the organization of the Federal Government, including the elements of the intelligence community, with re-

spect to combatting the proliferation of weapons of mass destruction.

(2) SPECIFIC REQUIREMENTS.—In carrying out the study, the Commission shall—

(A) assess the current structure and organization of the departments and agencies of the Federal Government having responsibilities for combatting the proliferation of weapons of mass destruction; and

(B) assess the effectiveness of United States cooperation with foreign governments with respect to nonproliferation activities, including cooperation—

(i) between elements of the intelligence community and elements of the intelligence-gathering services of foreign governments;

(ii) between other departments and agencies of the Federal Government and the counterparts to such departments and agencies in foreign governments; and

(iii) between the Federal Government and international organizations.

(3) ASSESSMENTS.—In making the assessments under paragraph (2), the Commission should address—

(A) the organization of the export control activities (including licensing and enforcement activities) of the Federal Government relating to the proliferation of weapons of mass destruction;

(B) arrangements for coordinating the funding of United States nonproliferation activities;

(C) existing arrangements governing the flow of information among departments and agencies of the Federal Government responsible for nonproliferation activities;

(D) the effectiveness of the organization and function of interagency groups in ensuring implementation of United States treaty obligations, laws, and policies with respect to nonproliferation;

(E) the administration of sanctions for purposes of nonproliferation, including the measures taken by departments and agencies of the Federal Government to implement, assess, and enhance the effectiveness of such sanctions;

(F) the organization, management, and oversight of United States counterproliferation activities;

(G) the recruitment, training, morale, expertise, retention, and advancement of Federal Government personnel responsible for the nonproliferation functions of the Federal Government, including any problems in such activities;

(H) the role in United States nonproliferation activities of the National Security Council, the Office of Management and Budget, the Office of Science and Technology Policy, and other offices in the Executive Office of the President having responsibilities for such activities;

(I) the organization of the activities of the Federal Government to verify government-to-government assurances and commitments with respect to nonproliferation,

including assurances regarding the future use of commodities exported from the United States; and

(J) the costs and benefits to the United States of increased centralization and of decreased centralization in the administration of the nonproliferation activities of the Federal Government.

(b) **RECOMMENDATIONS.**—In conducting the study, the Commission shall develop recommendations on means of improving the effectiveness of the organization of the departments and agencies of the Federal Government in meeting the national security interests of the United States with respect to the proliferation of weapons of mass destruction. Such recommendations shall include specific recommendations to eliminate duplications of effort, and other inefficiencies, in and among such departments and agencies.

(c) **REPORT.**—(1) Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress a report containing a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

**SEC. 713. [50 U.S.C. 2351 nt] POWERS OF COMMISSION.**

(a) **HEARINGS.**—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this subtitle.

(b) **INFORMATION FROM FEDERAL AGENCIES.**—

(1) **IN GENERAL.**—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(2) **CLASSIFIED INFORMATION.**—A department or agency may furnish the Commission classified information under this subsection. The Commission shall take appropriate actions to safeguard classified information furnished to the Commission under this paragraph.

(c) **POSTAL SERVICES.**—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) **GIFTS.**—The Commission may accept, use, and dispose of gifts or donations of services or property.

**SEC. 714. [50 U.S.C. 2351 nt] COMMISSION PERSONNEL MATTERS.**

(a) **COMPENSATION OF MEMBERS.**—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that

received for their services as officers or employees of the United States.

(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) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive 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 for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure 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 prescribed for level V of the Executive Schedule under section 5316 of such title.

**SEC. 715. [50 U.S.C. 2351 nt] TERMINATION OF COMMISSION.**

The Commission shall terminate 60 days after the date on which the Commission submits its report under section 712(c).

**SEC. 716. [50 U.S.C. 2351 nt] DEFINITION.**

For purposes of this subtitle, the term “intelligence community” shall have the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

**SEC. 717. [50 U.S.C. 2351 nt] PAYMENT OF COMMISSION EXPENSES.**

The compensation, travel expenses, per diem allowances of members and employees of the Commission, and other expenses of the Commission shall be paid out of funds available to the Director of Central Intelligence for the payment of compensation, travel allowances, and per diem allowances, respectively, of employees of the Central Intelligence Agency.

## Subtitle B—Other Matters

### SEC. 721. [50 U.S.C. 2366] REPORTS ON ACQUISITION OF TECHNOLOGY RELATING TO WEAPONS OF MASS DESTRUCTION AND ADVANCED CONVENTIONAL MUNITIONS.

(a) REPORTS.—The Director of Central Intelligence shall submit to Congress a report on—

(1) the acquisition by foreign countries during the preceding 6 months of dual-use and other technology useful for the development or production of weapons of mass destruction (including nuclear weapons, chemical weapons, and biological weapons) and advanced conventional munitions; and

(2) trends in the acquisition of such technology by such countries.

(b) SUBMITTAL DATES.—(1) The report required by subsection (a) shall be submitted each year to the congressional intelligence committees and the congressional leadership on a semiannual basis on the dates provided in section 507 of the National Security Act of 1947.

(2) In this subsection:

(A) The term “congressional intelligence committees” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(B) The term “congressional leadership” means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.

(c) FORM OF REPORTS.—Each report submitted under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

## TITLE VIII—RENEWAL AND REFORM OF INTELLIGENCE ACTIVITIES

### SEC. 801. [50 U.S.C. 401 nt] SHORT TITLE.

This title may be cited as the “Intelligence Renewal and Reform Act of 1996”.

### SEC. 802. COMMITTEE ON FOREIGN INTELLIGENCE.

[Section 802 amended section 101 of the National Security Act of 1947 (50 U.S.C. 402).]

### SEC. 803. ANNUAL REPORTS ON INTELLIGENCE.

(a) [Section 803(a) amended section 109 of the National Security Act of 1947 (50 U.S.C. 404d).]

(b) [Section 803(b) amended section 109 of the National Security Act of 1947 (50 U.S.C. 404d) and the table of contents for the National Security Act of 1947.]

### SEC. 804. TRANSNATIONAL THREATS.

[Section 804 added subsection (i) to section 101 of the National Security Act of 1947 (50 U.S.C. 402).]

### SEC. 805. OVERALL MANAGEMENT OF CENTRAL INTELLIGENCE.

(a) [Section 805(a) amended section 102 of the National Security Act of 1947 (50 U.S.C. 403).]

(b) [Section 805(b) added section 102A to the National Security Act of 1947 (50 U.S.C. 403-1).]

(c) [Section 805(c) amended the table of contents for the National Security Act of 1947 (50 U.S.C. 401 et. seq.).]

**SEC. 806. NATIONAL INTELLIGENCE COUNCIL.**

[Section 806 amends section 103(b) of the National Security Act of 1947 (50 U.S.C. 403-3(b)).]

**SEC. 807. ENHANCEMENT OF AUTHORITY OF DIRECTOR OF CENTRAL INTELLIGENCE TO MANAGE BUDGET, PERSONNEL, AND ACTIVITIES OF INTELLIGENCE COMMUNITY.**

(a) [Section 807(a) amends section 103(c) of the National Security Act of 1947 (50 U.S.C. 403-3(c)).]

(b) [Section 807(b) amends section 104(c) of the National Security Act of 1947 (50 U.S.C. 403-4(c)).]

(c) [50 U.S.C. 403-3 nt] PERIODIC REPORTS ON EXPENDITURES.—Not later than January 1, 1997, the Director of Central Intelligence and the Secretary of Defense shall prescribe guidelines to ensure prompt reporting to the Director and the Secretary on a periodic basis of budget execution data for all national, defense-wide, and tactical intelligence activities.

(d) [50 U.S.C. 403-3 nt] DATABASE PROGRAM TRACKING.—Not later than January 1, 1999, the Director of Central Intelligence and the Secretary of Defense shall develop and implement a database to provide timely and accurate information on the amounts, purposes, and status of the resources, including periodic budget execution updates, for all national, defense-wide, and tactical intelligence activities.

(e) [50 U.S.C. 403-4 nt] PERSONNEL, TRAINING, AND ADMINISTRATIVE ACTIVITIES.—Not later than January 31 of each year through 1999, the Director of Central Intelligence shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives a report on the policies and programs the Director has instituted under subsection (f) of section 104 of the National Security Act of 1947.

**SEC. 808. RESPONSIBILITIES OF SECRETARY OF DEFENSE PERTAINING TO THE NATIONAL FOREIGN INTELLIGENCE PROGRAM.**

[Section 808 amended section 105 of the National Security Act of 1947 (50 U.S.C. 403-5).]

**SEC. 809. IMPROVEMENT OF INTELLIGENCE COLLECTION.**

(a) [Section 809 added subsection (f) to section 102 of the National Security Act of 1947 (50 U.S.C. 403).]

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**SEC. 810. IMPROVEMENT OF ANALYSIS AND PRODUCTION OF INTELLIGENCE.**

[Section 810 added subsection (g) to section 102 of the National Security Act of 1947 (50 U.S.C. 403).]

**SEC. 811. IMPROVEMENT OF ADMINISTRATION OF INTELLIGENCE ACTIVITIES.**

[Section 811 added subsection (h) to section 102 of the National Security Act of 1947 (50 U.S.C. 403).]

**SEC. 812. PAY LEVEL OF DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE FOR COMMUNITY MANAGEMENT AND ASSISTANT DIRECTORS OF CENTRAL INTELLIGENCE.**

(a) [Section 812(a) amended section 5314 of title 5, United States Code.]

(b) [Section 812(b) amended section 5315 of title 5, United States Code.]

**SEC. 813. GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY.**

(a) [Section 813(a) added section 20 to the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.).]

(b) [50 U.S.C. 403t nt] **APPLICABILITY OF APPOINTMENT REQUIREMENTS.**—The requirement established by section 20 of the Central Intelligence Agency Act of 1949, as added by subsection (a), for the appointment by the President, by and with the advice and consent of the Senate, of an individual to the position of General Counsel of the Central Intelligence Agency shall apply as follows:

(1) To any vacancy in such position that occurs after the date of the enactment of this Act.

(2) To the incumbent serving in such position on the date of the enactment of this Act as of the date that is six months after such date of enactment, if such incumbent has served in such position continuously between such date of enactment and the date that is six months after such date of enactment.

(c) [Section 813(c) amends section 5315 of title 5, United States Code.]

**SEC. 814. ASSISTANCE FOR LAW ENFORCEMENT AGENCIES BY INTELLIGENCE COMMUNITY.**

(a) [Section 814(a) added section 105A to the National Security Act of 1947 (50 U.S.C. 403–5a).]

(b) [Section 814(b) added section 105A to the table of contents to the National Security Act of 1947 (50 U.S.C. 401 note).]

**SEC. 815. APPOINTMENT OF OFFICIALS RESPONSIBLE FOR INTELLIGENCE-RELATED ACTIVITIES.**

(a) [Section 815(a) amends section 106 of the National Security Act of 1947 (50 U.S.C. 403–6) to read as follows.]

(b) [Section 815(b) amends section 106 in the table of contents of the National Security Act of 1947 (50 U.S.C. 401 note).]

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## **TITLE IX—FINANCIAL MATTERS**

**SEC. 901. AUTHORIZATION OF FUNDING PROVIDED BY 1996 SUPPLEMENTAL APPROPRIATIONS ACT.**

Amounts obligated or expended for intelligence or intelligence-related activities based on and otherwise in accordance with the appropriations provided by the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134), including any such obligations or expenditures occurring before the enactment of this Act, shall be deemed to have been specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) and are hereby ratified and confirmed.

**INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1996**

PUBLIC LAW 104-93—January 6, 1996

AN ACT To authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1996”.

\* \* \* \* \*

**TITLE III—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 303. APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES.**

(a) [Section 303(a) added title IX to the National Security Act of 1947 (50 U.S.C. 401 et seq.).]

(b) [Section 303(b) added title IX to the table of sections to the National Security Act of 1947 (50 U.S.C. 401 et seq.).]

**SEC. 304. THRIFT SAVINGS PLAN FORFEITURE.**

(a) [Section 304(a) amdded paragraph (5) to section 8432(g) of title 5, United States Code.]

(b) [5 U.S.C. 8432 nt] **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to offenses upon which the requisite annuity forfeitures are based occurring on or after the date of the enactment of this Act.

**SEC. 305. AUTHORITY TO RESTORE SPOUSAL PENSION BENEFITS TO SPOUSES WHO COOPERATE IN CRIMINAL INVESTIGATIONS AND PROSECUTIONS FOR NATIONAL SECURITY OFFENSES.**

[Section 305 added subsection (e) to section 8318 of title 5, United States Code.]

**SEC. 306. [50 U.S.C. 435 nt] SECRECY AGREEMENTS USED IN INTELLIGENCE ACTIVITIES.**

Notwithstanding any other provision of law not specifically referencing this section, a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or

officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum—

(1) require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government; and

(2) provide that the form or agreement does not bar—

(A) disclosures to Congress; or

(B) disclosures to an authorized official of an executive agency that are deemed essential to reporting a violation of United States law.

**SEC. 307. LIMITATION ON AVAILABILITY OF FUNDS FOR AUTOMATIC DECLASSIFICATION OF RECORDS OVER 25 YEARS OLD.**

(a) **IN GENERAL.**—The Director of Central Intelligence shall use no more than \$25,000,000 of the amounts authorized to be appropriated for fiscal year 1996 by this Act for the National Foreign Intelligence Program to carry out the provisions of section 3.4 of Executive Order 12958. The Director may, in the Director's discretion, draw on this amount for allocation to the agencies within the National Foreign Intelligence Program for the purpose of automatic declassification of records over 25 years old.

(b) **REQUIRED BUDGET SUBMISSION.**—The President shall submit for fiscal year 1997 and each of the following fiscal years through fiscal year 2000 a budget request which specifically sets forth the funds requested for implementation of section 3.4 of Executive Order 12958.

**SEC. 308. AMENDMENT TO THE HATCH ACT REFORM AMENDMENTS OF 1993.**

[Section 308 amended section 7325 of title 5, United States Code.]

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**SEC. 310. ASSISTANCE TO FOREIGN COUNTRIES.**

Notwithstanding any other provision of law, funds authorized to be appropriated by this Act may be used to provide assistance to a foreign country for counterterrorism efforts if—

(1) such assistance is provided for the purpose of protecting the property of the United States Government or the life and property of any United States citizen, or furthering the apprehension of any individual involved in any act of terrorism against such property or persons; and

(2) the Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives are notified not later than 15 days prior to the provision of such assistance.

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## TITLE IV—CENTRAL INTELLIGENCE AGENCY

### SEC. 401. EXTENSION OF THE CIA VOLUNTARY SEPARATION PAY ACT.

(a) [Section 401(a) amended section 2(f) of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4(f)).]

(b) [Section 401(b) added subsection (i) to section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4).]

### SEC. 402. [50 U.S.C. 435 nt] VOLUNTEER SERVICE PROGRAM.

(a) GENERAL AUTHORITY.—The Director of Central Intelligence is authorized to establish and maintain a program from fiscal years 1996 through 2001 to utilize the services contributed by not more than 50 annuitants who serve without compensation as volunteers in aid of the review for declassification or downgrading of classified information by the Central Intelligence Agency under applicable Executive orders governing the classification and declassification of national security information and Public Law 102–526.

(b) COSTS INCIDENTAL TO SERVICES.—The Director is authorized to use sums made available to the Central Intelligence Agency by appropriations or otherwise for paying the costs incidental to the utilization of services contributed by individuals under subsection (a). Such costs may include (but need not be limited to) training, transportation, lodging, subsistence, equipment, and supplies. The Director may authorize either direct procurement of equipment, supplies, and services, or reimbursement for expenses, incidental to the effective use of volunteers. Such expenses or services shall be in accordance with volunteer agreements made with such individuals. Sums made available for such costs may not exceed \$100,000.

(c) APPLICATION OF CERTAIN PROVISIONS OF LAW.—A volunteer under this section shall be considered to be a Federal employee for the purposes of subchapter I of title 81 (relating to compensation of Federal employees for work injuries) and section 1346(b) and chapter 171 of title 28 (relating to tort claims). A volunteer under this section shall be covered by and subject to the provisions of chapter 11 of title 18 of the United States Code as if they were employees or special Government employees depending upon the days of expected service at the time they begin volunteering.

### SEC. 403. AUTHORITIES OF THE INSPECTOR GENERAL OF THE CENTRAL INTELLIGENCE AGENCY.

(a) [Section 403(a) amended section 17(b)(5) of the Central Intelligence Act of 1949 (50 U.S.C. 403q(b)(5)).]

(b) [Section 403(b) amended section 17(e)(3)(A) of the Central Intelligence Act of 1949 (50 U.S.C. 403q(e)(3)(A)).]

## TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

### SEC. 501. DEFENSE INTELLIGENCE SENIOR LEVEL POSITIONS.

[Section 501 amended section 1604 of title 10, United States Code, to read.]

**SEC. 502. COMPARABLE BENEFITS AND ALLOWANCES FOR CIVILIAN AND MILITARY PERSONNEL ASSIGNED TO DEFENSE INTELLIGENCE FUNCTIONS OVERSEAS.**

(a) [Section 502(a) amended section 1605 of title 10, United States Code.]

(b) [Section 502(b) amended section 431 of title 37, United States Code.]

**SEC. 503. EXTENSION OF AUTHORITY TO CONDUCT INTELLIGENCE COMMERCIAL ACTIVITIES.**

[Section 503 amended section 431(a) of title 10, United States Code.]

**SEC. 504. AVAILABILITY OF FUNDS FOR TIER II UAV.**

All funds appropriated for fiscal year 1995 for the Medium Altitude Endurance Unmanned Aerial Vehicle (Tier II) are specifically authorized, within the meaning of section 504 of the National Security Act of 1947 (50 U.S.C. 414), for such purpose.

**SEC. 505. MILITARY DEPARTMENT CIVILIAN INTELLIGENCE PERSONNEL MANAGEMENT SYSTEM.**

(a) [Section 505(a) added section 1599a to chapter 81 of title 10, United States Code.]

(b) [Section 505(b) added section 1599a to the table of section at the beginning of chapter 81 of title 10, United States Code.]

**SEC. 506. ENHANCEMENT OF CAPABILITIES OF CERTAIN ARMY FACILITIES.**

(a) **AUTHORITY.**—(1) In addition to funds otherwise available for such purpose, the Secretary of the Army may transfer or reprogram funds for the enhancement of the capabilities of the Bad Aibling Station and the Menwith Hill Station, including improvements of facility infrastructure and quality of life programs at those installations.

(2) The authority of paragraph (1) may be exercised notwithstanding any other provision of law.

(b) **SOURCE OF FUNDS.**—Funds available for the Army for operations and maintenance for fiscal years 2000 and 2001 shall be available to carry out subsection (a).

(c) **CONGRESSIONAL NOTIFICATION.**—Whenever the Secretary of the Army determines that an amount to be transferred or reprogrammed under this section would cause the total amount transferred or reprogrammed in that fiscal year under this section to exceed \$1,000,000, the Secretary shall notify in advance the Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the Senate and the Permanent Select Committee on Intelligence, the Committee on National Security, and the Committee on Appropriations of the House of Representatives and provide a justification for the increased expenditure.

(d) **STATUTORY CONSTRUCTION.**—Nothing in this section may be construed to modify or obviate existing law or practice with regard to the transfer or reprogramming of funds in excess of \$2,000,000 from the Department of the Army to the Bad Aibling Station and the Menwith Hill Station.

## **TITLE VI—FEDERAL BUREAU OF INVESTIGATION**

### **SEC. 601. DISCLOSURE OF INFORMATION AND CONSUMER REPORTS TO FBI FOR COUNTERINTELLIGENCE PURPOSES.**

(a) [Section 601(a) added section 624 to the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).]

(b) [Section 601(a) added section 624 to the table of sections at the beginning of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).]

## **TITLE VII—TECHNICAL AMENDMENTS**

### **SEC. 701. CLARIFICATION WITH RESPECT TO PAY FOR DIRECTOR OR DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE APPOINTED FROM COMMISSIONED OFFICERS OF THE ARMED FORCES.**

(a) [Section 701(a) amended section 102(c)(3)(C) of the National Security Act of 1947 (50 U.S.C. 403(c)(3)).]

(b) [Section 701(b) amended section 102(c)(3)(A) and 102(c)(3)(B) of the National Security Act of 1947 (50 U.S.C. 403(c)(3)).]

### **SEC. 702. CHANGE OF DESIGNATION OF CIA OFFICE OF SECURITY.**

[Section 702 amended section 701(b)(3) of the National Security Act of 1947 (50 U.S.C. 431(b)(3)).]



**INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1995**

PUBLIC LAW 103-359—October 14, 1994

AN ACT To authorize appropriations for fiscal year 1995 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1995”.

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**TITLE III—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 304. REPEAL OF RESTRICTION ON INTELLIGENCE COOPERATION WITH SOUTH AFRICA.**

[Section 304 repealed section 107 of the Intelligence Authorization Act for Fiscal Year 1987 (Public Law 99-569).]

\* \* \* \* \*

**TITLE IV—CENTRAL INTELLIGENCE  
AGENCY**

**SEC. 401. ILLNESS OR INJURY REQUIRING HOSPITALIZATION.**

[Section 401 amended section 4(a)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403(e)(a)).]

**SEC. 402. INSPECTOR GENERAL OF THE CENTRAL INTELLIGENCE AGENCY.**

[Section 402 amended section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q).]

**SEC. 403. ADVANCED INFORMATION PRESENTATION PROJECT.**

Of the funds made available under this Act, the Director of Central Intelligence is authorized during fiscal year 1995 to expend not more than \$3,000,000 to develop products to demonstrate multimedia and graphical data interface techniques on topics of general interest to policy makers and the public. The products shall utilize unclassified Government information, augmented if appro-

prate by commercially available information, and the project shall be limited to the development of not more than six products. In carrying out this section, the Director may acquire commercially available technology. Not later than August 1, 1995, the Director shall submit the products developed under this section to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

## **TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

### **SEC. 501. CENTRAL IMAGERY OFFICE.**

(a)(1) [Section 501(a)(1) amended section 3(4)(E) of the National Security Act of 1947 (50 U.S.C. 401a(4)(E)).]

(2) [Section 501(a)(2) amended section 105(b)(2) of the National Security Act of 1947 (50 U.S.C. 403–5(b)(2)).]

(3) [Section 501(a)(3) amended section 106(b) of the National Security Act of 1947 (50 U.S.C. 403–6(b)).]

(b) [Section 501(b) amended chapter 83 of title 10, United States Code.]

(c) [Section 501(c) amended section 2302(a)(2)(C)(ii) of title 5, United States Code.]

(d) [Section 501(d) amended section 3132(a)(1)(B) of title 5, United States Code.]

(e) [Section 501(e) amended section 4301(1)(B)(ii) of title 5, United States Code.]

(f) [Section 501(f) amended section 4701(a)(1)(B) of title 5, United States Code.]

(g) [Section 501(g) amended section 5102(a)(1) of title 5, United States Code.]

(h) [Section 501(h) amended section 5342(a)(1) of title 5, United States Code.]

(i) [Section 501(i) amended section 6339(a)(1) of title 5, United States Code.]

(j) [Section 501(j) amended section 7103(a)(3) of title 5, United States Code.]

(k) [Section 501(k) amended section 7323(b)(2)(B)(i) of title 5, United States Code.]

(l) [Section 501(l) amended section 7511(b)(8) of title 5, United States Code.]

(m) [Section 501(m) amended section 105(a)(1) of the Ethics in Government Act of 1978 (5 U.S.C. App.).]

(n) [Section 501(n) amended section 7(b)(2)(A)(i) of the Employee Polygraph Protection Act of 1988 (29 U.S.C. 2006(b)(2)(A)(i)).]

### **SEC. 502. EXCEPTION TO PUBLIC AVAILABILITY OF CERTAIN DEPARTMENT OF DEFENSE MAPS, CHARTS, AND GEODETIC DATA.**

[Section 502 amended section 2796(b)(1) of title 10, United States Code.]

**SEC. 503. [10 U.S.C. 424 nt] DISCLOSURE OF GOVERNMENTAL AFFILIATION BY DEPARTMENT OF DEFENSE INTELLIGENCE PERSONNEL OUTSIDE OF THE UNITED STATES.**

(a) **IN GENERAL.**—Notwithstanding section 552a(e)(3) of title 5, United States Code, intelligence personnel of the Department of Defense who are authorized by the Secretary of Defense to collect intelligence from human sources shall not be required, when making an initial assessment contact outside the United States, to give notice of governmental affiliation to potential sources who are United States persons.

(b) **RECORDS.**—Records concerning such contacts shall be maintained by the Department of Defense and made available upon request to the appropriate committees of the Congress in accordance with applicable security procedures. Such records shall include for each such contact an explanation of why notice of government affiliation could not reasonably be provided, the nature of the information obtained from the United States person as a result of the contact, and whether additional contacts resulted with the person concerned.

(c) **DEFINITIONS.**—For the purposes of this section—

(1) the term “United States” includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States; and

(2) the term “United States person” means any citizen, national, or permanent resident alien of the United States.

**SEC. 504. EXCEPTION FROM AUTHORITY FOR OBLIGATION OF CERTAIN UNAUTHORIZED FISCAL YEAR 1994 DEFENSE APPROPRIATIONS.**

Section 1006 of the National Defense Authorization Act for Fiscal Year 1995 shall not apply to amounts which remain available for obligation on the date of the enactment of this Act for national foreign intelligence programs, projects, and activities.

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**TITLE VI—CONSTRUCTION OF FACILITIES FOR THE INTELLIGENCE COMMUNITY**

**SEC. 601. LIMITATIONS ON FUNDING OF THE NATIONAL RECONNAISSANCE OFFICE.**

(a) **REVIEW OF PROJECT; COMPLIANCE WITH DOD PROCUREMENT AND CONTRACTING PROCEDURES.**—

(1) **IN GENERAL.**—Of the funds authorized to be made available by this Act for the National Reconnaissance Office under the classified Schedule of Authorizations referred to in section 102—

(A) \$50,000,000 out of the Miscellaneous Support account of the Mission Support Consolidated Expenditure Center may not be obligated or expended until the Director of Central Intelligence and the Secretary of Defense have completed a review of the National Reconnaissance Office Headquarters Building project and the results of such re-

view have been disclosed to the intelligence committees; and

(B) no such funds authorized to be made available by this Act may be obligated or expended for the purchase of any real property, or to contract for any construction or acquisition, in connection with the construction of buildings or facilities, unless (and to the extent that)—

(i) such purchase or contract is made or entered into in accordance with the policies and procedures applicable to other elements of the Department of Defense; or

(ii) the President determines that the national security interest of the United States requires that such policies and procedures shall not apply to a particular purchase or contract and reports such determination in accordance with subsection (b).

(2) APPLICATION OF PROVISIONS.—Paragraph (1)(B) shall not apply to contracts made or entered into for the purchase of real property, or for construction or acquisition, before the date of enactment of this Act.

(b) WAIVER PROCEDURES.—Not later than 30 days after making a determination under subsection (a)(1)(B)(ii), the President shall report in writing the determination to the intelligence committees.

(c) SPECIFIC AUTHORIZATION AND APPROPRIATIONS REQUIRED.—Except to the extent and in the amounts specifically provided in an Act authorizing appropriations, in an appropriation Act, or in accordance with established reprogramming procedures, no funds made available under any provision of law may be obligated or expended for the construction of the National Reconnaissance Office Headquarters Building project if such funds would cause the total amount obligated or expended for such project to exceed \$310,000,000.

(d) DEFINITION.—As used in this section, the term “National Reconnaissance Office Headquarters Building project” means the project for the headquarters buildings of the National Reconnaissance Office, situated at the so-called Westfields site, and includes all construction and improvement of facilities (including “fit up”) and all actions related to the acquisition of land, communications, computers, furniture and other building furnishings, and vehicle parking facilities.

**SEC. 602. [50 U.S.C. 403-2b] LIMITATION ON CONSTRUCTION OF FACILITIES TO BE USED PRIMARILY BY THE INTELLIGENCE COMMUNITY.**

(a) IN GENERAL.—

(1) IN GENERAL.—Except as provided in subsection (b), no project for the construction of any facility to be used primarily by personnel of any component of the intelligence community which has an estimated Federal cost in excess of \$750,000 may be undertaken in any fiscal year unless such project is specifically identified as a separate item in the President’s annual fiscal year budget request and is specifically authorized by the Congress.

(2) NOTIFICATION.—In the case of a project for the construction of any facility to be used primarily by personnel of any component of the intelligence community which has an es-

timated Federal cost greater than \$500,000 but less than \$750,000, or where any improvement project to such a facility has an estimated Federal cost greater than \$500,000, the Director of Central Intelligence shall submit a notification to the intelligence committees specifically identifying such project.

(b) EXCEPTION.—

(1) IN GENERAL.—Notwithstanding subsection (a) but subject to paragraphs (2) and (3), a project for the construction of a facility to be used primarily by personnel of any component of the intelligence community may be carried out if the Secretary of Defense and the Director of Central Intelligence jointly determine—

(A) that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and

(B) that the requirement for the project is so urgent that deferral of the project for inclusion in the next Act authorizing appropriations for the intelligence community would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(2) REPORT.—When a decision is made to carry out a construction project under this subsection, the Secretary of Defense and the Director of Central Intelligence jointly shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (A) the justification for the project and the current estimate of the cost of the project, (B) the justification for carrying out the project under this subsection, and (C) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(3) PROJECTS PRIMARILY FOR CIA.—If a project referred to in paragraph (1) is primarily for the Central Intelligence Agency, the Director of Central Intelligence shall make the determination and submit the report required by paragraphs (1) and (2).

(4) LIMITATION.—A project carried out under this subsection shall be carried out within the total amount of funds appropriated for intelligence and intelligence-related activities that have not been obligated.

(c) APPLICATION.—This section shall not apply to any project which is subject to subsection (a)(1)(A) or (c) of section 601.

**SEC. 603. [50 U.S.C. 403-3 nt] IDENTIFICATION OF CONSTITUENT COMPONENTS OF BASE INTELLIGENCE BUDGET.**

The Director of Central Intelligence shall include the same level of budgetary detail for the Base Budget that is provided for Ongoing Initiatives and New Initiatives to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate in the congressional justification materials for the annual submission of the National Foreign Intelligence Program of each fiscal year.

**SEC. 604. [50 U.S.C. 403-2b nt] DEFINITIONS.**

As used in this title:

(1) **INTELLIGENCE COMMITTEES.**—The term “intelligence committees” means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(2) **INTELLIGENCE COMMUNITY.**—The term “intelligence community” has the same meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

## **TITLE VII—CLASSIFICATION MANAGEMENT**

### **SEC. 701. CLASSIFICATION AND DECLASSIFICATION OF INFORMATION.**

(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the President shall, by Executive order, provide for the classification and declassification of information. It is the sense of Congress that the Executive order should provide for the following:

(1) The qualification of information for classification only when its public disclosure would cause identifiable damage to the national security.

(2) The declassification of information if the appropriate authority within the Executive branch determines that the Government’s interest in continuing to protect such information is outweighed by the public’s interest in having the information made available.

(3) The automatic declassification of information that is more than 25 years old unless such information is within a category designated by the President as requiring document-by-document review to identify that information whose disclosure to unauthorized persons would clearly damage the national security.

(b) **SUBMISSION TO CONGRESS; EFFECTIVE DATE.**—The Executive order referred to in subsection (a) may not take effect until after 30 days after the date on which such proposed Executive order is submitted to the Permanent Select Committee on Intelligence and the Committee on Government Operations<sup>1</sup> of the House of Representatives and the Select Committee on Intelligence and the Committee on Governmental Affairs of the Senate.

### **SEC. 702. DECLASSIFICATION PLAN.**

Each agency of the National Foreign Intelligence Program to which is appropriated more than \$1,000,000 in the security, countermeasures, and related activities structural category for fiscal year 1995 shall allocate at least two percent of its total expenditure in this structural category for fiscal year 1995 to the classification management consolidated expenditure center, to be used for the following activities:

(1) Development of a phased plan to implement declassification guidelines contained in the Executive order which replaces Executive Order 12356. Each such agency shall provide the plan to Congress within 90 days after the beginning of fis-

<sup>1</sup>The Committee on Government Operations was renamed to the Committee on Government Reform and Oversight by H. Res. 6 in the 104th Congress, and renamed the Committee on Government Reform by H. Res. 5 in the 106th Congress.

cal year 1995 or 90 days after the publication of such replacement Executive order, whichever is later. This plan shall include an accounting of the amount of archived material, levels of classification, types of storage media and locations, review methods to be employed, and estimated costs of the declassification activity itself; as well as an assessment by the agency of the appropriate types and amounts of information to be maintained in the future, how it will be stored, safeguarded, and reviewed, and the projected costs of these classification management activities for the succeeding five years.

(2) Commencement of the process of declassification and reduction of the amount of archived classified documents maintained by each agency.

(3) Submission of a report to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate within 90 days after the end of fiscal year 1995 on the progress made in carrying out paragraph (2), with reference to the plan required by paragraph (1).

## **TITLE VIII—COUNTERINTELLIGENCE AND SECURITY**

### **SEC. 801. [50 U.S.C. 401 nt] SHORT TITLE.**

This title may be cited as the “Counterintelligence and Security Enhancements Act of 1994”.

### **SEC. 802. ACCESS TO CLASSIFIED INFORMATION.**

(a) [Section 802(a) added title VIII to the National Security Act of 1947 (50 U.S.C. 401 et seq.).]

(b) [Section 802(b) added title VIII to the table of contents of the National Security Act of 1947 (50 U.S.C. 401 et seq.).]

(c) [50 U.S.C. 435 nt] **EFFECTIVE DATE.**—The amendments made by subsections (a) and (b) shall take effect 180 days after the date of enactment of this Act.

### **SEC. 803. REWARDS FOR INFORMATION CONCERNING ESPIONAGE.**

(a) [Section 803(a) amended section 3071 of title 18, United States Code.]

(b) [Section 803(b) amended section 3077 of title 18, United States Code.]

(c) [Section 803(c) amended the item relating to section 204 in the table of chapters for part II of title 18, United States Code and the heading for section 204.]

### **SEC. 804. CRIMINAL FORFEITURE FOR VIOLATION OF CERTAIN ESPIONAGE LAWS.**

(a) [Section 804(a) added subsection (d) to section 798 of title 18, United States Code.]

(b)(1) [Section 804(b)(1) amended section 793(h)(3) of title 18, United States Code.]

(2) [Section 804(b)(2) amended section 794(d)(3) of title 18, United States Code.]

(c) [Section 804(c) added subsection (e) to section 4 of the Subversive Activities Control Act of 1950 (50 U.S.C. 783).]

**SEC. 805. DENIAL OF ANNUITIES OR RETIRED PAY TO PERSONS CONVICTED OF ESPIONAGE IN FOREIGN COURTS INVOLVING UNITED STATES INFORMATION.**

[Section 805 added subsection (d) to section 8312 of title 5, United States Code.]

**SEC. 806. POSTEMPLOYMENT ASSISTANCE FOR CERTAIN TERMINATED INTELLIGENCE EMPLOYEES OF THE DEPARTMENT OF DEFENSE.**

(a) CONSOLIDATION AND EXTENSION OF AUTHORITY.—

(1) [Section 806(a)(1) added section 1599 to chapter 81 of title 10, United States Code.]

(2) [Section 806(a)(2) added section 1599 to the table of sections at the beginning of chapter 81 of title 10, United States Code.]

(b) REPEAL OF PREDECESSOR AUTHORITY.—

(1) [Section 806(b)(1) repealed paragraph (4) of section 1604(e) of title 10, United States Code.]

(2) [Section 806(b)(2) repealed section 17 of the National Security Agency Act of 1959 (50 U.S.C. 402 note).]

**SEC. 807. PROVIDING A COURT ORDER PROCESS FOR PHYSICAL SEARCHES UNDERTAKEN FOR FOREIGN INTELLIGENCE PURPOSES.**

(a)(1) [Section 807(a)(1) redesignated title III as title IV and section 301 as 401 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).]

(1) by redesignating title III as title IV and section 301 as section 401, respectively;

(2) [Section 807(a)(2) amended section 401 (as so redesignated) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).]

(3) [Section 807(a)(3) added title III to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).]

(b) [Section 807(b) amended the table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).]

(c) [50 U.S.C. 1821 nt] EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect 90 days after the date of enactment of this Act, except that any physical search approved by the Attorney General of the United States to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of title III of the Foreign Intelligence Surveillance Act of 1978 (as added by this Act), if that search is conducted within 180 days after the date of enactment of this Act pursuant to regulations issued by the Attorney General, which were in the possession of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the date of enactment of this Act.

**SEC. 808. LESSER CRIMINAL OFFENSE FOR UNAUTHORIZED REMOVAL OF CLASSIFIED DOCUMENTS.**

(a) [Section 808(a) added section 1924 to chapter 93 of title 18, United States Code.]

(b) [Section 808(b) added section 1924 to the table of sections at the beginning of chapter 93 of title 10, United States Code.]

**SEC. 809. [50A U.S.C. 2170b] REPORTS ON FOREIGN INDUSTRIAL ESPIONAGE.****(a) IN GENERAL.—**

(1) **SUBMISSION AND CONTENTS.**—In order to assist Congress in its oversight functions with respect to this Act and to improve the awareness of United States industry of foreign industrial espionage and the ability of such industry to protect against such espionage, the President shall submit to Congress a report that describes, as of the time of the report, the following:

(A) The respective policy functions and operational roles of the agencies of the executive branch of the Federal Government in identifying and countering threats to United States industry of foreign industrial espionage, including the manner in which such functions and roles are coordinated.

(B) The means by which the Federal Government communicates information on such threats, and on methods to protect against such threats, to United States industry in general and to United States companies known to be targets of foreign industrial espionage.

(C) The specific measures that are being or could be undertaken in order to improve the activities referred to in subparagraphs (A) and (B), including proposals for any modifications of law necessary to facilitate the undertaking of such activities.

(D) The threat to United States industry of foreign industrial espionage and any trends in that threat, including—

(i) the number and identity of the foreign governments conducting foreign industrial espionage;

(ii) the industrial sectors and types of information and technology targeted by such espionage; and

(iii) the methods used to conduct such espionage.

(2) **DATE OF SUBMISSION.**—The President shall submit the report required under this subsection not later than six months after the date of the enactment of this Act.

**(b) ANNUAL UPDATE.—**

(1) **SUBMITTAL TO CONGRESSIONAL INTELLIGENCE COMMITTEES.**—Not later each year than the date provided in section 507 of the National Security Act of 1947, the President shall submit to the congressional intelligence committees a report updating the information referred to in subsection (a)(1)(D).

(2) **SUBMITTAL TO CONGRESSIONAL LEADERSHIP.**—Not later than April 14 each year, the President shall submit to the congressional leadership a report updating the information referred to in subsection (a)(1)(D).

**(3) DEFINITIONS.—In this subsection:**

(A) **CONGRESSIONAL INTELLIGENCE COMMITTEES.**—The term “congressional intelligence committees” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(B) **CONGRESSIONAL LEADERSHIP.**—The term “congressional leadership” means the Speaker and the minority

leader of the House of Representatives and the majority leader and the minority leader of the Senate.

(c) FORM OF REPORTS.—To the maximum extent practicable, the reports referred to in subsections (a) and (b) shall be submitted in an unclassified form, but may be accompanied by a classified appendix.

(d) [Section 809(d) amended section 721(k)(1)(B) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(k)(1)(B)).]

(e) DEFINITION.—For the purposes of this section, “foreign industrial espionage” means industrial espionage conducted by a foreign government or by a foreign company with direct assistance of a foreign government against a private United States company and aimed at obtaining commercial secrets.

**SEC. 810. COUNTERNARCOTICS TARGETS FUNDING.**

Not less than \$5,000,000 from the base budget for the National Security Agency shall be transferred to United States Army signals intelligence activities directed at counternarcotics targets. A detailed operations plan with special emphasis on the United States/Mexico border and including the participation of the National Security Agency, the Drug Enforcement Administration, the Federal Bureau of Investigation, and the United States Customs Service, shall be provided to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives no later than November 15, 1994. This plan shall include a detailed description of the planned targets and the type of intelligence collection, dissemination, analysis and tasking that will be included in these operations.

**SEC. 811. [50 U.S.C. 402a] COORDINATION OF COUNTERINTELLIGENCE ACTIVITIES.**

(a) ESTABLISHMENT OF COUNTERINTELLIGENCE POLICY BOARD.—There is established within the executive branch of Government a National Counterintelligence Policy Board (in this section referred to as the “Board”). The Board shall report to the President through the National Security Council.

(b) FUNCTION OF THE BOARD.—The Board shall serve as the principal mechanism for—

(1) developing policies and procedures for the approval of the President to govern the conduct of counterintelligence activities; and

(2) resolving conflicts, as directed by the President, which may arise between elements of the Government which carry out such activities.

(c) COORDINATION OF COUNTERINTELLIGENCE MATTERS WITH THE FEDERAL BUREAU OF INVESTIGATION.—(1) Except as provided in paragraph (5), the head of each department or agency within the executive branch shall ensure that—

(A) the Federal Bureau of Investigation is advised immediately of any information, regardless of its origin, which indicates that classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power;

(B) following a report made pursuant to subparagraph (A), the Federal Bureau of Investigation is consulted with respect to all subsequent actions which may be undertaken by the de-

partment or agency concerned to determine the source of such loss or compromise; and

(C) where, after appropriate consultation with the department or agency concerned, the Federal Bureau of Investigation undertakes investigative activities to determine the source of the loss or compromise, the Federal Bureau of Investigation is given complete and timely access to the employees and records of the department or agency concerned for purposes of such investigative activities.

(2) Except as provided in paragraph (5), the Director of the Federal Bureau of Investigation shall ensure that espionage information obtained by the Federal Bureau of Investigation pertaining to the personnel, operations, or information of departments or agencies of the executive branch, is provided through appropriate channels in a timely manner to the department or agency concerned, and that such departments or agencies are consulted in a timely manner with respect to espionage investigations undertaken by the Federal Bureau of Investigation which involve the personnel, operations, or information of such department or agency.

(3)(A) The Director of the Federal Bureau of Investigation shall submit to the head of the department or agency concerned a written assessment of the potential impact of the actions of the department or agency on a counterintelligence investigation.

(B) The head of the department or agency concerned shall—

(i) use an assessment under subparagraph (A) as an aid in determining whether, and under what circumstances, the subject of an investigation under paragraph (1) should be left in place for investigative purposes; and

(ii) notify in writing the Director of the Federal Bureau of Investigation of such determination.

(C) The Director of the Federal Bureau of Investigation and the head of the department or agency concerned shall continue to consult, as appropriate, to review the status of an investigation covered by this paragraph, and to reassess, as appropriate, a determination of the head of the department or agency concerned to leave a subject in place for investigative purposes.

(4)(A) The Federal Bureau of Investigation shall notify appropriate officials within the executive branch, including the head of the department or agency concerned, of the commencement of a full field espionage investigation with respect to an employee within the executive branch.

(B) A department or agency may not conduct a polygraph examination, interrogate, or otherwise take any action that is likely to alert an employee covered by a notice under subparagraph (A) of an investigation described in that subparagraph without prior coordination and consultation with the Federal Bureau of Investigation.

(5) Where essential to meet extraordinary circumstances affecting vital national security interests of the United States, the President may on a case-by-case basis waive the requirements of paragraph (1), (2), or (3), as they apply to the head of a particular department or agency, or the Director of the Federal Bureau of Investigation. Such waiver shall be in writing and shall fully state the justification for such waiver. Within thirty days, the President shall notify the Select Committee on Intelligence of the Senate and

the Permanent Select Committee on Intelligence of the House of Representatives that such waiver has been issued, and at that time or as soon as national security considerations permit, provide these committees with a complete explanation of the circumstances which necessitated such waiver.

(6)(A) Not later each year than the date provided in section 507 of the National Security Act of 1947, the Director of the Federal Bureau of Investigation shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

(B) Not later than February 1 each year, the Director shall, in accordance with applicable security procedures, submit to the Committees on the Judiciary of the Senate and House of Representatives a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

(C) The Director of the Federal Bureau of Investigation shall submit each report under this paragraph in consultation with the Director of Central Intelligence and the Secretary of Defense.

(7) Nothing in this section may be construed to alter the existing jurisdictional arrangements between the Federal Bureau of Investigation and the Department of Defense with respect to investigations of persons subject to the Uniform Code of Military Justice, nor to impose additional reporting requirements upon the Department of Defense with respect to such investigations beyond those required by existing law and executive branch policy.

(8) As used in this section, the terms "foreign power" and "agent of a foreign power" have the same meanings as set forth in sections 101 (a) and (b), respectively, of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

## **TITLE IX—COMMISSION ON THE ROLES AND CAPABILITIES OF THE UNITED STATES INTELLIGENCE COMMUNITY**

### **SEC. 901. [50 U.S.C. 401 nt] ESTABLISHMENT.**

There is established a commission to be known as the Commission on the Roles and Capabilities of the United States Intelligence Community (hereafter in this title referred to as the "Commission").

### **SEC. 902. [50 U.S.C. 401 nt] COMPOSITION AND QUALIFICATIONS.**

(a) MEMBERSHIP.—(1) The Commission shall be composed of 17 members, as follows:

(A) Nine members shall be appointed by the President from private life, no more than four of whom shall have previously held senior leadership positions in the intelligence community and no more than five of whom shall be members of the same political party.

(B) Two members shall be appointed by the majority leader of the Senate, of whom one shall be a Member of the Senate and one shall be from private life.

(C) Two members shall be appointed by the minority leader of the Senate, of whom one shall be a Member of the Senate and one shall be from private life.

(D) Two members shall be appointed by the Speaker of the House of Representatives, of whom one shall be a Member of the House and one shall be from private life.

(E) Two members shall be appointed by the Minority Leader of the House of Representatives, of whom one shall be a Member of the House and one shall be from private life.

(2) The members of the Commission appointed from private life under paragraph (1) shall be persons of demonstrated ability and accomplishment in government, business, law, academe, journalism, or other profession, who have a substantial background in national security matters.

(b) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate two of the members appointed from private life to serve as Chairman and Vice Chairman, respectively, of the Commission.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner as the original appointment.

(d) DEADLINE FOR APPOINTMENTS.—The appointments required by subsection (a) shall be made within 45 days after the date of enactment of this Act.

(e) MEETINGS.—(1) The Commission shall meet at the call of the Chairman.

(2) The Commission shall hold its first meeting not later than four months after the date of enactment of this Act.

(f) QUORUM.—Nine members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings, take testimony, or receive evidence.

(g) SECURITY CLEARANCES.—Appropriate security clearances shall be required for members of the Commission who are private United States citizens. Such clearances shall be processed and completed on an expedited basis by appropriate elements of the executive branch of Government and shall, in any case, be completed within 90 days of the date such members are appointed.

(h) APPLICATION OF CERTAIN PROVISIONS OF LAW.—In light of the extraordinary and sensitive nature of its deliberations, the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), and the regulations prescribed by the Administrator of General Services pursuant to that Act, shall not apply to the Commission. Further, the provisions of section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”), shall not apply to the Commission; however, records of the Commission shall be subject to the Federal Records Act and, when transferred to the National Archives and Records Agency, shall no longer be exempt from the provisions of such section 552.

**SEC. 903. [50 U.S.C. 401 nt] DUTIES OF THE COMMISSION.**

(a) IN GENERAL.—It shall be the duty of the Commission—

(1) to review the efficacy and appropriateness of the activities of the United States intelligence community in the post-cold war global environment; and

(2) to prepare and transmit the reports described in section 904.

(b) IMPLEMENTATION.—In carrying out subsection (a), the Commission shall specifically consider the following:

(1) What should be the roles and missions of the intelligence community in terms of providing support to the defense and foreign policy establishments and how should these relate to tactical intelligence activities.

(2) Whether the roles and missions of the intelligence community should extend beyond the traditional areas of providing support to the defense and foreign policy establishments, and, if so, what areas should be considered legitimate for intelligence collection and analysis, and whether such areas should include, for example, economic issues, environmental issues, and health issues.

(3) What functions, if any, should continue to be assigned to the organizations of the intelligence community, including the Central Intelligence Agency, and what capabilities should these organizations retain for the future.

(4) Whether the existing organization and management framework of the organizations of the intelligence community, including the Central Intelligence Agency, provide the optimal structure for the accomplishment of their missions.

(5) Whether existing principles and strategies governing the acquisition and maintenance of intelligence collection capabilities should be retained and what collection capabilities should the Government retain to meet future contingencies.

(6) Whether intelligence analysis, as it is currently structured and executed, adds sufficient value to information otherwise available to the Government to justify its continuation, and, if so, at what level of resources.

(7) Whether the existing decentralized system of intelligence analysis results in significant waste or duplication, and, if so, what can be done to correct these deficiencies.

(8) Whether the existing arrangements for allocating available resources to accomplish the roles and missions assigned to intelligence agencies are adequate.

(9) Whether the existing framework for coordinating among intelligence agencies with respect to intelligence collection and analysis and other activities, including training and operational activities, provides an optimal structure for such coordination.

(10) Whether current personnel policies and practices of intelligence agencies provide an optimal work force to satisfy the needs of intelligence consumers.

(11) Whether resources for intelligence activities should continue to be allocated as part of the defense budget or be treated by the President and Congress as a separate budgetary program.

(12) Whether the existing levels of resources allocated for intelligence collection or intelligence analysis, or to provide a capability to conduct covert actions, are seriously at variance with United States needs.

(13) Whether there are areas of redundant or overlapping activity or areas where there is evidence of serious waste, duplication, or mismanagement.

(14) To what extent, if any, should the budget for United States intelligence activities be publicly disclosed.

(15) To what extent, if any, should the United States intelligence community collect information bearing upon private commercial activity and the manner in which such information should be controlled and disseminated.

(16) Whether counterintelligence policies and practices are adequate to ensure that employees of intelligence agencies are sensitive to security problems, and whether intelligence agencies themselves have adequate authority and capability to address perceived security problems.

(17) The manner in which the size, missions, capabilities, and resources of the United States intelligence community compare to those of other countries.

(18) Whether existing collaborative arrangements between the United States and other countries in the area of intelligence cooperation should be maintained and whether such arrangements should be expanded to provide for increased burdensharing.

(19) Whether existing arrangements for sharing intelligence with multinational organizations in support of mutually shared objectives are adequate.

**SEC. 904. [50 U.S.C. 401 nt] REPORTS.**

(a) INITIAL REPORT.—Not later than two months after the first meeting of the Commission, the Commission shall transmit to the congressional intelligence committees a report setting forth its plan for the work of the Commission.

(b) INTERIM REPORTS.—Prior to the submission of the report required by subsection (c), the Commission may issue such interim reports as it finds necessary and desirable.

(c) FINAL REPORT.—No later than March 1, 1996, the Commission shall submit to the President and to the congressional intelligence committees a report setting forth the activities, findings, and recommendations of the Commission, including any recommendations for the enactment of legislation that the Commission considers advisable. To the extent feasible, such report shall be unclassified and made available to the public. Such report shall be supplemented as necessary by a classified report or annex, which shall be provided separately to the President and the congressional intelligence committees.

**SEC. 905. [50 U.S.C. 401 nt] 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, sit and act at times and places, take testimony, receive evidence, and administer oaths to the extent that the Commission or any panel or member considers advisable.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any intelligence agency or from any other Federal department or agency any information that the Commission considers necessary to enable the Commission to carry out its

responsibilities under this section. Upon request of the Chairman of the Commission, the head of any such department or agency shall furnish such information expeditiously to the Commission.

(c) **POSTAL, PRINTING AND BINDING 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.

(d) **SUBCOMMITTEES.**—The Commission may establish panels composed of less than the 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.

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

**SEC. 906. [50 U.S.C. 401 nt] PERSONNEL MATTERS.**

(a) **COMPENSATION OF MEMBERS.**—Each member of the Commission who is a private United States citizen shall be paid, if requested, at a rate equal to the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission. All members of the Commission who are Members of Congress shall serve without compensation in addition to that received for their services as Members of Congress.

(b) **TRAVEL EXPENSES.**—Each member 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) **IN GENERAL.**—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 staff director of the Commission shall be appointed from private life, and such appointment shall be subject to the approval of the Commission as a whole. No member of the professional staff may be a current officer or employee of an intelligence agency, except that up to three current employees of intelligence agencies who are on rotational assignment to the Executive Office of the President may serve on the Commission staff, subject to the approval of the Commission as a whole.

(2) **COMPENSATION.**—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 classi-

fication 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 administrative and clerical functions.

(e) **PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.**—The Chairman of the Commission may procure 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.

(f) **ADMINISTRATIVE AND SUPPORT SERVICES.**—The Director of Central Intelligence shall furnish the Commission, on a non-reimbursable basis, any administrative and support services requested by the Commission consistent with this title.

**SEC. 907. [50 U.S.C. 401 nt] PAYMENT OF COMMISSION EXPENSES.**

The compensation, travel expenses, per diem allowances of members and employees of the Commission, and other expenses of the Commission shall be paid out of funds available to the Director of Central Intelligence for the payment of compensation, travel allowances, and per diem allowances, respectively, of employees of the Central Intelligence Agency.

**SEC. 908. [50 U.S.C. 401 nt] TERMINATION OF THE COMMISSION.**

The Commission shall terminate one month after the date of the submission of the report required by section 904(c).

**SEC. 909. [50 U.S.C. 401 nt] DEFINITIONS.**

For purposes of this title—

(1) the term “intelligence agency” means any agency, office, or element of the intelligence community;

(2) the term “intelligence community” shall have the same meaning as set forth in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)); and

(3) the term “congressional intelligence committees” refers to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.



**INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1994**

PUBLIC LAW 103-178—December 3, 1993

AN ACT To authorize appropriations for fiscal year 1994 for the intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1994”.

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**TITLE II—CENTRAL INTELLIGENCE AGENCY  
RETIREMENT AND DISABILITY SYSTEM**

\* \* \* \* \*

**SEC. 202. TECHNICAL CORRECTIONS.**

(a) [Section 202(a) amended the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.).]

(b) [50 U.S.C. 2001 nt] RETROACTIVE EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as of February 1, 1993.

**SEC. 203. [50 U.S.C. 2032 nt] SURVIVOR ANNUITY, RETIREMENT ANNUITY, AND HEALTH BENEFITS FOR CERTAIN EX-SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES.**

(a) SURVIVOR ANNUITY.—

(1) IN GENERAL.—

(A) ENTITLEMENT OF FORMER WIFE OR HUSBAND.—Any person who was divorced on or before December 4, 1991, from a participant or retired participant in the Central Intelligence Agency Retirement and Disability System and who was married to such participant for not less than 10 years during such participant’s creditable service, at least five years of which were spent by the participant during the participant’s service as an employee of the Central Intelligence Agency outside the United States, or otherwise in a position the duties of which qualified the participant for designation by the Director of Central Intelligence as a participant under section 203 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2013), shall be entitled, except to the extent such person is disqualified under

paragraph (2), to a survivor annuity equal to 55 percent of the greater of—

(i) the unreduced amount of the participant's annuity, as computed under section 221(a) of such Act; or

(ii) the unreduced amount of what such annuity as so computed would be if the participant had not elected payment of the lump-sum credit under section 294 of such Act.

(B) REDUCTION IN SURVIVOR ANNUITY.—A survivor annuity payable under this subsection shall be reduced by an amount equal to any survivor annuity payments made to the former wife or husband under section 226 of such Act.

(2) LIMITATIONS.—A former wife or husband is not entitled to a survivor annuity under this subsection if—

(A) the former wife or husband remarries before age 55, except that the entitlement of the former wife or husband to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce;

(B) the former wife or husband is less than 50 years of age; or

(C) the former wife or husband meets the definition of "former spouse" that was in effect under section 204(b)(4) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees before December 4, 1991.

(3) COMMENCEMENT AND TERMINATION OF ANNUITY.—

(A) COMMENCEMENT OF ANNUITY.—The entitlement of a former wife or husband to a survivor annuity under this subsection shall commence—

(i) in the case of a former wife or husband of a participant or retired participant who is deceased as of October 1, 1994, beginning on the later of—

(I) the 60th day after such date; or

(II) the date on which the former wife or husband reaches age 50; and

(ii) in the case of any other former wife or husband, beginning on the latest of—

(I) the date on which the participant or retired participant to whom the former wife or husband was married dies;

(II) the 60th day after October 1, 1994; or

(III) the date on which the former wife or husband attains age 50.

(B) TERMINATION OF ANNUITY.—The entitlement of a former wife or husband to a survivor annuity under this subsection terminates on the last day of the month before the former wife's or husband's death or remarriage before attaining age 55. The entitlement of a former wife or husband to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce.

(4) ELECTION OF BENEFITS.—A former wife or husband of a participant or retired participant shall not become entitled under this subsection to a survivor annuity or to the restora-

tion of the survivor annuity unless the former wife or husband elects to receive it instead of any other survivor annuity to which the former wife or husband may be entitled under the Central Intelligence Agency Retirement and Disability System or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(5) APPLICATION.—

(A) TIME LIMIT; WAIVER.—A survivor annuity under this subsection shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require. Any such application shall be submitted not later than October 1, 1995. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(B) RETROACTIVE BENEFITS.—Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former wife or husband with respect to all periods before such approval during which the former wife or husband was entitled to such annuity under this subsection, but in no event shall a survivor annuity be payable under this subsection with respect to any period before October 1, 1994.

(6) RESTORATION OF ANNUITY.—Notwithstanding paragraph (5)(A), the deadline by which an application for a survivor annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such a survivor annuity is restored after October 1, 1994, under paragraph (2)(A) or (3)(B).

(7) APPLICABILITY IN CASES OF PARTICIPANTS TRANSFERRED TO FERS.—

(A) ENTITLEMENT.—Except as provided in paragraph (2), this subsection shall apply to a former wife or husband of a participant under the Central Intelligence Agency Retirement and Disability System who has elected to become subject to chapter 84 of title 5, United States Code.

(B) AMOUNT OF ANNUITY.—The survivor annuity of a person covered by subparagraph (A) shall be equal to 50 percent of the unreduced amount of the participant's annuity computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 and shall be reduced by an amount equal to any survivor annuity payments made to the former wife or husband under section 8445 of title 5, United States Code.

(b) RETIREMENT ANNUITY.—

(1) IN GENERAL.—

(A) ENTITLEMENT OF FORMER WIFE OR HUSBAND.—A person described in subsection (a)(1)(A) shall be entitled, except to the extent such former spouse is disqualified under paragraph (2), to an annuity—

(i) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(ii) if not married to the participant throughout such creditable service, equal to that former wife's or husband's pro rata share of 50 percent of such annuity (determined in accordance with section 222(a)(1)(B) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2032 (a)(1)(B))).

(B) REDUCTION IN RETIREMENT ANNUITIES.—

(i) AMOUNT OF REDUCTION.—An annuity payable under this subsection shall be reduced by an amount equal to any apportionment payments payable to the former wife or husband pursuant to the terms of a court order incident to the dissolution of the marriage of such former spouse and the participant, former participant, or retired participant.

(ii) DEFINITION OF TERMS.—For purposes of clause (i):

(I) APPORTIONMENT.—The term “apportionment” means a portion of a retired participant's annuity payable to a former wife or husband either by the retired participant or the Government in accordance with the terms of a court order.

(II) COURT ORDER.—The term “court order” means any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2) LIMITATIONS.—A former wife or husband is not entitled to an annuity under this subsection if—

(A) the former wife or husband remarries before age 55, except that the entitlement of the former wife or husband to an annuity under this subsection shall be restored on the date such remarriage is dissolved by death, annulment, or divorce;

(B) the former wife or husband is less than 50 years of age; or

(C) the former wife or husband meets the definition of “former spouse” that was in effect under section 204(b)(4) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees before December 4, 1991.

(3) COMMENCEMENT AND TERMINATION.—

(A) RETIREMENT ANNUITIES.—The entitlement of a former wife or husband to an annuity under this subsection—

(i) shall commence on the later of—

(I) October 1, 1994;

(II) the day the participant upon whose service the right to the annuity is based becomes entitled to an annuity under such Act; or

(III) such former wife's or husband's 50th birthday; and

(ii) shall terminate on the earlier of—

(I) the last day of the month before the former wife or husband dies or remarries before 55 years of age, except that the entitlement of the former wife or husband to an annuity under this subsection shall be restored on the date such remar-

riage is dissolved by death, annulment, or divorce;  
or

(II) the date on which the annuity of the participant terminates.

(B) **DISABILITY ANNUITIES.**—Notwithstanding subparagraph (A)(i)(II), in the case of a former wife or husband of a disability annuitant—

(i) the annuity of the former wife or husband shall commence on the date on which the participant would qualify on the basis of the participant's creditable service for an annuity under the Central Intelligence Agency Retirement Act (other than a disability annuity) or the date the disability annuity begins, whichever is later; and

(ii) the amount of the annuity of the former wife or husband shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(C) **ELECTION OF BENEFITS.**—A former wife or husband of a participant or retired participant shall not become entitled under this subsection to an annuity or to the restoration of an annuity unless the former wife or husband elects to receive it instead of any survivor annuity to which the former wife or husband may be entitled under the Central Intelligence Agency Retirement and Disability System or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(D) **APPLICATION.**—

(i) **TIME LIMIT; WAIVER.**—An annuity under this subsection shall not be payable unless appropriate written application is provided to the Director of Central Intelligence, complete with any supporting documentation which the Director may by regulation require, not later than October 1, 1995. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(ii) **RETROACTIVE BENEFITS.**—Upon approval of an application under clause (i), the appropriate annuity shall be payable to the former wife or husband with respect to all periods before such approval during which the former wife or husband was entitled to an annuity under this subsection, but in no event shall an annuity be payable under this subsection with respect to any period before October 1, 1994.

(4) **RESTORATION OF ANNUITIES.**—Notwithstanding paragraph (3)(D)(i), the deadline by which an application for a retirement annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such annuity is restored after October 1, 1994, under paragraph (2)(A) or (3)(A)(ii).

(5) **APPLICABILITY IN CASES OF PARTICIPANTS TRANSFERRED TO FERS.**—The provisions of this subsection shall apply to a

former wife or husband of a participant under the Central Intelligence Agency Retirement and Disability System who has elected to become subject to chapter 84 of title 5, United States Code. For purposes of this paragraph, any reference in this section to a participant's annuity under the Central Intelligence Agency Retirement and Disability System shall be deemed to refer to the transferred participant's annuity computed in accordance with section 302(a) of the Federal Employee's Retirement System Act of 1986.

(6) SAVINGS PROVISION.—Nothing in this subsection shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under title II or III of the Central Intelligence Agency Retirement Act.

(c) [Section 203(c) amended section 16 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403p).]

(d) SOURCE OF PAYMENT FOR ANNUITIES.—Annuities provided under subsections (a) and (b) shall be payable from the Central Intelligence Agency Retirement and Disability Fund maintained under section 202 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2012).

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall take effect as of October 1, 1994, the amendments made by subsection (c) shall apply to individuals on and after October 1, 1994, and no benefits provided pursuant to those subsections shall be payable with respect to any period before October 1, 1994.

(2) Section 16(d) of the Central Intelligence Agency Act of 1949 (as added by subsection (c) of this section) shall apply to individuals beginning on the date of enactment of this Act.

**SEC. 204. CROSS-REFERENCE CORRECTIONS TO REVISED CIARDS STATUTE.**

(a) [Section 204(a) amended section 306 of the Intelligence Authorization Act, Fiscal Year 1990 (50 U.S.C. 403r-1).]

(b) [Section 204(b) amended sections 853, 854, and 855 of the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.).]

(c) [Section 204(c) amended section 3121(b)(5)(H)(i) of the Internal Revenue Code of 1986.]

(d) [Section 204(d) amended section 210(a)(5)(H)(i) of the Social Security Act (42 U.S.C. 410(a)(5)(H)(i)).]

**TITLE III—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 303. TEMPORARY PAY RETENTION FOR CERTAIN FBI EMPLOYEES.**

(a) IN GENERAL.—Section 406 of the Federal Employees Pay Comparability Act of 1990 (104 Stat. 1467) is amended to read as follows:

**“SEC. 406. FBI NEW YORK FIELD DIVISION.**

“(a) The total pay of an employee of the Federal Bureau of Investigation assigned to the New York Field Division before the date of September 29, 1993, in a position covered by the demonstration

project conducted under section 601 of the Intelligence Authorization Act for Fiscal Year 1989 (Public Law 100-453) shall not be reduced as a result of the termination of the demonstration project during the period that employee remains employed after that date in a position covered by the demonstration project.

“(b) Beginning on September 30, 1993, any periodic payment under section 601(a)(2) of the Intelligence Authorization Act for Fiscal Year 1989 for any such employee shall be reduced by the amount of any increase in basic pay under title 5, United States Code, including the following provisions: an annual adjustment under section 5303, locality-based comparability payment under section 5304, initiation or increase in a special pay rate under section 5305, promotion under section 5334, periodic step increase under section 5335, merit increase under section 5404, or other increase to basic pay under any provision of law.”.

(b) [5 U.S.C. 5305 nt] EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of September 30, 1993, and shall apply to the pay of employees to whom the amendment applies that is earned on or after that date.

**SEC. 304. ANNUAL REPORT ON INTELLIGENCE COMMUNITY.**

(a) [Section 304(a) added section 109 to title I of the National Security Act of 1947.]

(b) [Section 304(b) added section 109 to the table of contents in the first section of the National Security Act of 1947.]

\* \* \* \* \*

**SEC. 309. AMENDMENT TO SECTION 307 OF THE NATIONAL SECURITY ACT.**

[Section 309 amended section 307 of the National Security Act of 1947.]

**SEC. 310. RATIFICATION OF FUNDING TRANSACTION.**

Funds obligated or expended for the Accelerated Architecture Acquisition Initiative of the Plan to Improve the Imagery Ground Architecture based upon the notification to the appropriate committees of Congress by the Director of Central Intelligence dated August 16, 1993, shall be deemed to have been specifically authorized by the Congress for purposes of section 504(a)(3) of the National Security Act of 1947.

**SEC. 311. NATIONAL SECURITY EDUCATION TRUST FUND.**

(a) REDUCTION OF AMOUNTS IN TRUST FUND.—The amount in the National Security Education Trust Fund established pursuant to section 804 of Public Law 102-183 (50 U.S.C. 1904) in excess of \$120,000,000 that has not been appropriated from the trust fund as of the date of enactment of this Act shall be transferred to the Treasury of the United States as miscellaneous receipts.

(b) [Section 311(b) amended sections 802 and 806 of Public Law 102-183 (50 U.S.C. 1903).]

(c) [Section 311(c) added section 810 to title VIII of Public Law 102-183 (50 U.S.C. 1901 et seq.).]

(d) [Section 311(c) added section 802(a)(1)(A) of Public Law 102-183 (50 U.S.C. 1902(a)(1)(A)).]

**TITLE IV—CENTRAL INTELLIGENCE AGENCY****SEC. 401. [50 U.S.C. 403 nt] SUPPORT FOR SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION.**

(a) **GENERAL AUTHORITY.**—In recognition of the importance of science, mathematics, and engineering to the national security and in order to encourage students to pursue studies in science, mathematics, and engineering, the Director of Central Intelligence may carry out a program in fiscal years 1994 and 1995 to award cash prizes and visits to the Central Intelligence Agency (including the payment of costs associated with such visits) for students who participate in high school science fairs within the United States.

(b) **MERIT.**—Awards made under subsection (a) shall be made solely on the basis of merit.

(c) **EQUITABLE REGIONAL REPRESENTATION.**—The Director shall ensure that there is equitable regional representation with respect to the program carried out under subsection (a).

(d) **LIMITATION ON EXPENDITURES.**—The Director may not expend more than \$5,000 for each of the fiscal years 1994 and 1995 to carry out this section.

**TITLE V—ADDITIONAL TECHNICAL AMENDMENTS****SEC. 501. CENTRAL INTELLIGENCE AGENCY ACT OF 1949.**

[Section 501 amended the Central Intelligence Agency Act of 1949.]

**SEC. 502. NATIONAL SECURITY ACT OF 1947.**

[Section 502 amended section 103(d)(3) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(3)).]

**SEC. 503. CODIFICATION IN TITLE 10, UNITED STATES CODE, OF CERTAIN PERMANENT PROVISIONS.**

(a)(1) [Section 503(a)(1) added section 425 to chapter 21 of title 10, United States Code.]

(2) [Section 503(a)(2) added section 425 to the table of sections at the beginning of subchapter I chapter 21 of title 10, United States Code.]

(b) [Section 503(b) repealed section 406 of the Intelligence Authorization Act for Fiscal Year 1993 (Public Law 102–496; 10 U.S.C. 424 note).]

**INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1993**

PUBLIC LAW 102-496—October 24, 1992

AN ACT To authorize appropriations for fiscal year 1993 for intelligence and intelligence-related activities of the United States Government and the Central Intelligence Agency Retirement and Disability System, to revise and restate the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1993”.

\* \* \* \* \*

**TITLE III—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 303. [50 U.S.C. 414 nt] SENSE OF CONGRESS REGARDING DISCLOSURE OF ANNUAL INTELLIGENCE BUDGET.**

It is the sense of Congress that, beginning in 1993, and in each year thereafter, the aggregate amount requested and authorized for, and spent on, intelligence and intelligence-related activities should be disclosed to the public in an appropriate manner.

\* \* \* \* \*

**TITLE IV—DEPARTMENT OF DEFENSE  
INTELLIGENCE ACTIVITIES**

\* \* \* \* \*

**SEC. 403. NOTICE TO CONGRESSIONAL INTELLIGENCE COMMITTEES OF DEPARTMENT OF DEFENSE REAL PROPERTY TRANSACTIONS AND CONSTRUCTION PROJECTS INVOLVING INTELLIGENCE AGENCIES.**

(a) REAL PROPERTY TRANSACTIONS.—(1) Section 2662 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(f) Whenever a transaction covered by this section is made by or on behalf of an intelligence component of the Department of Defense or involves real property used by such a component, any report under this section with respect to the transaction that is submitted to the Committees on Armed Services of the Senate and the

House of Representatives shall be submitted concurrently to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.”.

(2)(A) The heading of such section is amended to read as follows:

**“§ 2662. Real property transactions: reports to congressional committees”.**

(B) The item relating to such section in the table of sections at the beginning of chapter 159 of such title is amended to read as follows:

“2662. Real property transactions: reports to congressional committees.”.

(b) CONSTRUCTION PROJECTS.—Section 2801(c)(4) of such title is amended by inserting before the period at the end the following: “and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate”.

\* \* \* \* \*

**TITLE VIII—RESTATEMENT OF CIARDS STATUTE**

\* \* \* \* \*

**SEC. 804. [50 U.S.C. 2001 nt] SAVINGS PROVISIONS.**

(a) PRIOR ELECTIONS.—Any election made under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees before the effective date specified in section 805 shall not be affected by the amendment made by section 802 and shall be deemed to have been made under the corresponding provision of that Act as restated by section 802 as the Central Intelligence Agency Retirement Act.

(b) REFERENCES.—Any reference in any other Act, or in any Executive order, rule, or regulation, to the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, or to a provision of that Act, shall be deemed to refer to that Act and to the corresponding provision of that Act, as restated by section 802 as the Central Intelligence Agency Retirement Act.

\* \* \* \* \*

**INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1992**

PUBLIC LAW 102-183—December 4, 1991

AN ACT To authorize appropriations for fiscal year 1992 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Intelligence Authorization Act, Fiscal Year 1992”.

\* \* \* \* \*

**TITLE V—FEDERAL BUREAU OF INVESTIGATION PROVISIONS**

**SEC. 501. [28 U.S.C. 532 nt] FBI CRITICAL SKILLS SCHOLARSHIP PROGRAM.**

(a) **STUDY.**—The Director of the Federal Bureau of Investigation shall conduct a study relative to the establishment of an undergraduate training program with respect to employees of the Federal Bureau of Investigation that is similar in purpose, conditions, content, and administration to undergraduate training programs administered by the Central Intelligence Agency (under section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j)), the National Security Agency (under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 (note))), and the Defense Intelligence Agency (under section 1608 of title 10, United States Code).

(b) **IMPLEMENTATION.**—Any program proposed under subsection (a) may be implemented only after the Department of Justice and the Office of Management and Budget review and approve the implementation of such program.

(c) **AVAILABILITY OF FUNDS.**—Any payment made by the Director of the Federal Bureau of Investigation to carry out any program proposed to be established under subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

\* \* \* \* \*



**INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1991**

PUBLIC LAW 102-88—August 14, 1991

AN ACT To authorize appropriations for fiscal year 1991 for intelligence activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Intelligence Authorization Act, Fiscal Year 1991”.

\* \* \* \* \*

**TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM AND RELATED PROVISIONS**

\* \* \* \* \*

**SEC. 305. REDUCTION OF REMARRIAGE AGE.**

(a) \* \* \*

(b) [50 U.S.C. 2001 nt] EFFECTIVE DATE OF AMENDMENTS.—

(1) The amendments made by subsection (a) relating to widows or widowers shall apply in the case of a surviving spouse’s remarriage occurring on or after July 27, 1989, and with respect to periods beginning after such date.

(2) The amendments made by subsection (a) relating to former spouses shall apply with respect to any former spouse whose remarriage occurs after the date of enactment of this Act.

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**SEC. 307. RESTORATION OF FORMER SPOUSE BENEFITS AFTER DISSOLUTION OF REMARRIAGE.**

(a) \* \* \*

\* \* \* \* \*

**TITLE IV—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 403. EXCEPTED POSITIONS FROM THE COMPETITIVE SERVICE.**

Section 621 of the Department of Energy Organization Act (42 U.S.C. 7231) is amended by adding at the end thereof the following new subsection:

“(f) All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of the date of enactment of this Act shall, while employed in such positions, be exempt from the competitive service.”.

\* \* \* \* \*

**TITLE V—DEPARTMENT OF DEFENSE  
INTELLIGENCE PROVISIONS**

**SEC. 501. REIMBURSEMENT RATE FOR CERTAIN AIRLIFT SERVICES.**

(a) IN GENERAL.—Chapter 157 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 2642. Reimbursement rate for airlift services provided to Central Intelligence Agency**

“(a) AUTHORITY.—The Secretary of Defense may authorize the use of the Department of Defense reimbursement rate for military airlift services provided by a component of the Department of Defense to the Central Intelligence Agency, if the Secretary of Defense determines that those military airlift services are provided for activities related to national security objectives.

“(b) DEFINITION.—In this section, the term ‘Department of Defense reimbursement rate’ means the amount charged a component of the Department of Defense by another component of the Department of Defense.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2642. Reimbursement rate for airlift services provided to Central Intelligence Agency.”.

\* \* \* \* \*

**INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1990**

PUBLIC LAW 101-193—November 30, 1989

AN ACT To authorize appropriations for fiscal year 1990 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the “Intelligence Authorization Act, Fiscal Year 1990”.

\* \* \* \* \*

**TITLE V—IMPROVEMENTS TO PERSONNEL AUTHORITIES FOR INTELLIGENCE COMPONENTS OF THE DEPARTMENT OF DEFENSE**

\* \* \* \* \*

**DEFENSE INTELLIGENCE COLLEGE GIFT ACCEPTANCE AUTHORITY**

SEC. 502. (a) Chapter 155 of title 10, United States Code, is amended by adding at the end thereof the following new section:

**“§ 2607. Acceptance of gifts for the Defense Intelligence College**

“(a) The Secretary of Defense may accept, hold, administer, and use any gift (including any gift of an interest in real property) made for the purpose of aiding and facilitating the work of the Defense Intelligence College and may pay all necessary expenses in connection with the acceptance of such a gift.

“(b) Money, and proceeds from the sale of property, received as a gift under subsection (a) shall be deposited in the Treasury and shall be available for disbursement upon the order of the Secretary of Defense to the extent provided in annual appropriation Acts.

“(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

“(d) In this section, the term ‘gift’ includes a bequest of personal property or a devise of real property.”.

(b) The table of sections at the beginning of that chapter is amended by adding at the end thereof the following new item: “2607. Acceptance of gifts for the Defense Intelligence College.”.

\* \* \* \* \*

REQUIREMENTS FOR CITIZENSHIP FOR STAFF OF GEORGE C. MARSHALL  
EUROPEAN CENTER FOR SECURITY STUDIES

SEC. 506. (a) For purposes of section 319(c) of the Immigration and Nationality Act (8 U.S.C. 1430(c)), the George C. Marshall European Center for Security Studies, located in Garmisch, Federal Republic of Germany, shall be considered to be an organization described in clause (1) of such section.

(b) Subsection (a) shall apply with respect to periods of employment before, on, or after the date of the enactment of this Act.

(c) No more than two persons per year may be naturalized based on the provisions of subsection (a).

(d) Each instance of naturalization based on the provisions of subsection (a) shall be reported to the Committees on the Judiciary of the Senate and House of Representatives and to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives prior to such naturalization.

\* \* \* \* \*

TITLE VI—FBI NEW YORK FIELD DIVISION  
DEMONSTRATION PROJECT

FBI NEW YORK FIELD DIVISION DEMONSTRATION PROJECT

SEC. 601. (a) Section 601(a)(2) of the Intelligence Authorization Act, Fiscal Year 1989 is amended by striking out “who are subject by policy and practice to directed geographical transfer or reassignment”.

(b) The amendment made by subsection (a) shall take effect on October 1, 1989.

(c) In preparing for submission to the Congress the Budget of the United States for Fiscal Year 1991, the President shall take into account and, to the greatest extent possible, incorporate into such budget the recommendations of the National Advisory Commission on Law Enforcement as established by section 6160 of the Anti-Drug Abuse Act of 1988.

**【Section 602 repealed by section 501(a) of P.L. 103-199】**

FBI INVESTIGATIONS OF ESPIONAGE BY PERSONS EMPLOYED BY OR  
ASSIGNED TO UNITED STATES DIPLOMATIC MISSIONS ABROAD

SEC. 603. **【28 U.S.C. 533 nt】** Subject to the authority of the Attorney General, the FBI shall supervise the conduct of all investigations of violations of the espionage laws of the United States by persons employed by or assigned to United States diplomatic missions abroad. All departments and agencies shall report immediately to the FBI any information concerning such a violation. All departments and agencies shall provide appropriate assistance to the FBI in the conduct of such investigations. Nothing in this provision shall be construed as establishing a defense to any criminal, civil, or administrative action.

\* \* \* \* \*

# INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1989

PUBLIC LAW 100-453—September 29, 1988

AN ACT To authorize appropriations for fiscal year 1989 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the “Intelligence Authorization Act, Fiscal Year 1989”.

## TITLE I—INTELLIGENCE ACTIVITIES

### AUTHORIZATION OF APPROPRIATIONS

SEC. 101. (a) \* \* \*

\* \* \* \* \*

(d) [Expired December 31, 1989]

\* \* \* \* \*

## TITLE IV—GENERAL PROVISIONS

\* \* \* \* \*

### DISCLOSURE OF INFORMATION CONCERNING AMERICAN PERSONNEL LISTED AS PRISONER, MISSING, OR UNACCOUNTED FOR IN SOUTH-EAST ASIA

SEC. 404. [50 U.S.C. 401 nt] (a) This section is enacted to ensure that current disclosure policy is incorporated into law.

(b) Except as provided in subsection (c), the head of each department or agency—

(1) with respect to which funds are authorized under this Act, and

(2) which holds or receives live sighting reports of any United States citizen reported missing in action, prisoner of war, or unaccounted for from the Vietnam Conflict, shall make available to the next-of-kin of that United States citizen all reports, or portions thereof, held by that department or agency which have been correlated or possibly correlated to that citizen.

(c) Subsection (b) does not apply with respect to—

(1) information that would reveal or compromise sources and methods of intelligence collection; or

(2) specific information that previously has been made available to the next-of-kin.

(d) The head of each department or agency covered by subsection (a) shall make information available under this section in a timely manner.

\* \* \* \* \*

#### TITLE VI—FBI ENHANCED COUNTERINTELLIGENCE AUTHORITIES

##### DEMONSTRATION PROJECT ON MOBILITY AND RETENTION FOR THE NEW YORK FIELD DIVISION

SEC. 601. (a) Notwithstanding any other provision of law, the Director of the Federal Bureau of Investigation and the Director of the Office of Personnel Management shall conduct a demonstration project to ascertain the effects on the recruitment and retention of personnel, and on field operations in the New York Field Division of the Federal Bureau of Investigation of providing—

(1) lump-sum payments to personnel upon directed assignment to the New York Field Division from another geographical location who enter into an agreement to complete a specified minimum period of service, not to exceed three years, in the New York Field Division, except that no lump-sum payment under this paragraph may exceed \$20,000, and no employee shall be eligible to receive more than one lump-sum payment under this paragraph in connection with each such assignment; and

(2) periodic payments to New York Field Division employees, except that the amounts paid under this paragraph to an employee for any period may not be less than 20 per centum nor greater than 25 per centum of the basic pay paid or payable to such employee for service performed during such period.

Any lump-sum payment under paragraph (1) and any periodic payment under paragraph (2) shall be in addition to basic pay. Any authority to make payments under this section shall be effective only to the extent of available appropriations.

(b) Such demonstration project shall commence not later than ninety days after the date of enactment of this Act and shall terminate five years after such date, unless extended by law.

(c) The Director of the Federal Bureau of Investigation and the Director of the Office of Personnel Management shall jointly provide to the President and the Congress annual interim reports and, at the conclusion of the five year period, a final evaluation concerning the results of the demonstration project.

#### TITLE VII—DEPARTMENT OF DEFENSE

##### INTELLIGENCE PROVISIONS

SEC. 701. (a) Section 421 of title 10, United States Code, is amended to read as follows:

#### “§ 421. Funds for foreign cryptologic support

“(a) The Secretary of Defense may use appropriated funds available to the Department of Defense for intelligence and commu-

nications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.

“(b) The Secretary of Defense may use funds other than appropriated funds to pay for the expenses of arrangements with foreign countries for cryptologic support without regard for the provisions of law relating to the expenditure of United States Government funds, except that—

“(1) no such funds may be expended, in whole or in part, by or for the benefit of the Department of Defense for a purpose for which Congress had previously denied funds; and

“(2) proceeds from the sale of cryptologic items may be used only to purchase replacement items similar to the items that are sold; and

“(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

“(c) Any funds expended under the authority of subsection (a) shall be reported to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House pursuant to the provisions of title V of the National Security Act of 1947, as amended, and funds expended under the authority of subsection (b) shall be reported pursuant to procedures jointly agreed upon by such committees and the Secretary of Defense.”.

(b) The reference to section 421 in the sections at the beginning of chapter 21 of such title is amended to read “Funds for Foreign Cryptologic Support.”.

AUTHORITY TO ESTABLISH POSITION OF ASSISTANT SECRETARY OF  
DEFENSE FOR INTELLIGENCE

SEC. 702. Paragraph (3) of section 136(b) of title 10, United States Code, is amended to read as follows:

“(3)(A) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Department of Defense.

“(B) Notwithstanding subparagraph (A), one of the Assistant Secretaries established by the Secretary of Defense may be an Assistant Secretary of Defense for Intelligence, who shall have as his principal duty the overall supervision of intelligence affairs of the Department of Defense.

“(C) If the Secretary of Defense establishes an Assistant Secretary of Defense for Intelligence, the Assistant Secretary provided for under subparagraph (A) shall be the Assistant Secretary of Defense for Command, Control, and Communications and shall have as his principal duty the overall supervision of command, control, and communications affairs of the Department of Defense.”.

\* \* \* \* \*



**INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR  
1987**

PUBLIC LAW 99-569—October 27, 1986

AN ACT To authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1987”.

\* \* \* \* \*

**TITLE IV—COUNTERINTELLIGENCE AND SECURITY**

**COUNTERINTELLIGENCE OFFICIAL VISITOR EXCHANGES**

SEC. 401. (a) Chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following new section:

**“§ 539. Counterintelligence official reception and representation expenses**

“The Director of the Federal Bureau of Investigation may use funds available to the Federal Bureau of Investigation for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Federal Bureau of Investigation for consultation on counterintelligence matters.”.

(b) The table of contents for chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following: “539. Counterintelligence official reception and representation expenses.”.

(c) Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following new section:

**“§ 140a. Counterintelligence official reception and representation expenses**

“The Secretary of Defense may use funds available to the Department of Defense for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Department of Defense for consultation on counterintelligence matters.”.

(d) The table of contents for chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following: “140a. Counterintelligence official reception and representation expenses.”.

\* \* \* \* \*

PERMANENT EXTENSION OF DOD AUTHORITY TO USE PROCEEDS FROM  
COUNTERINTELLIGENCE OPERATIONS

SEC. 403. (a) Chapter 4 of title 10, United States Code, as amended by section 401(c) of this Act, is further amended by adding at the end thereof the following new section:

**“§ 140b. Authority to use proceeds from counterintelligence operations of the military departments**

“(a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, United States Code, use of proceeds from counterintelligence operations conducted by components of the military departments of offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, and to make exceptional performance awards to personnel involved in such operations, if use of appropriated funds to meet such expenses or to make such awards would not be practicable.

“(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

“(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management, and disposition of proceeds from counterintelligence operations conducted by components of the military departments, including effective internal systems of accounting and administrative controls.”.

(b) The table of contents for chapter 4 of title 10, United States Code, as amended by section 401(d) of this Act, is further amended by adding at the end thereof the following:

“140b. Authority to use proceeds from counterintelligence operations of the military departments.”.

TITLE V—ADMINISTRATIVE AUTHORITIES RELATING TO  
INTELLIGENCE PERSONNEL

\* \* \* \* \*

CENTRAL INTELLIGENCE AGENCY ACQUISITION OF CRITICAL SKILLS

SEC. 506. [50 U.S.C. 403j nt] Pursuant to the authority granted in section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), the Director of Central Intelligence shall establish an undergraduate training program with respect to civilian employees of the Central Intelligence Agency similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under section 16 of the National Security Act of 1959<sup>1</sup> (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

TITLE VI—MISCELLANEOUS

\* \* \* \* \*

<sup>1</sup> So in law. Probably should be National Security Agency Act of 1959.

## COVERT AGENT DISCLOSURE FEDERAL PENSION FOREITURE

SEC. 603. Section 8312(c)(1)(C) of title 5, United States Code is amended by striking the period at the end thereof and inserting in lieu thereof "or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).".

\* \* \* \* \*



**INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR  
1986**

PUBLIC LAW 99-169—December 4, 1985

AN ACT To authorize appropriations for fiscal year 1986 for intelligence and intelligence-related activities of the United States Government the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1986”.*

\* \* \* \* \*

**TITLE IV—PROVISIONS RELATING TO INTELLIGENCE  
AGENCIES**

SEC. 401. (a) [Section 401(a) added section 502 to the National Security Act of 1947.]

(b) The table of contents at the end of the first section of such Act is amended by inserting the following after the item relating to section 501:

“Sec. 502. Funding of intelligence activities.”.

(c) [50 U.S.C. 414 nt] The amendment made by section 401(a) of this Act shall not apply with respect to funds appropriated to the Director of Central Intelligence under the heading “ENHANCED SECURITY COUNTERMEASURES CAPABILITIES” in the Supplemental Appropriations Act, 1985 (Public Law 99-88).

\* \* \* \* \*

**TITLE VIII—ACCESS TO CRIMINAL HISTORY RECORDS FOR  
NATIONAL SECURITY PURPOSES**

SEC. 801. (a) Part III of title 5, United States Code, is amended by adding after chapter 89 the following new subpart:

**“Subpart H—Access to Criminal History Record Information**

**“CHAPTER 91—ACCESS TO CRIMINAL HISTORY  
RECORDS FOR NATIONAL SECURITY PURPOSES**

“Sec.

“9101. Criminal history record information for national security purposes.

**“§ 9101. Criminal history record information for national security purposes**

“(a) As used in this section:

“(1) The term ‘criminal justice agency’ includes Federal, State, and local agencies and means: (A) courts, or (B) a Government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

“(2) The term ‘criminal history record information’ means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

“(3) The term ‘classified information’ means information or material designated pursuant to the provisions of a statute or Executive order as requiring protection against unauthorized disclosure for reasons of national security.

“(4) The term ‘State’ means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, The Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

“(5) The term ‘local’ and ‘locality’ means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal, or other local government level.

“(b)(1) Upon request by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by such department, office or agency for the purpose of determining eligibility for (A) access to classified information or (B) assignment to or retention in sensitive national security duties. Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system. Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of providing such information, nor shall they in any event exceed those charged to State or local agencies other than criminal justice agencies for such information.

“(2) This subsection shall apply notwithstanding any other provision of law or regulation of any State or of any locality within a State, or any other law of the United States.

“(3)(A) Upon request by a State or locality, the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency shall enter into an agreement with such State or locality to indemnify and hold harmless such State or locality, and its officers, employees and agents, from any claim against such State or locality, or its officer, employee or agent, for damages, costs and other monetary loss, whether or not suit is instituted, arising from the disclosure or use by such department, office or agency of criminal history record information obtained from the State or locality pursuant to this subsection, if the laws of such State or locality, as of the date of enactment of this section, otherwise have the effect of prohibiting the disclosure of such criminal history record information to such department, office or agency.

“(B) When the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency and a State or locality have entered into an agreement described in subparagraph (A), and a claim described in such subparagraph is made against such State or locality, or its officer, employee, or agent, the State or locality shall expeditiously transmit notice of such claim to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made, and the United States shall have the opportunity to make all determinations regarding the settlement or defense of such claim.

“(c) The Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency shall not obtain criminal history record information pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for the purposes set forth in paragraph (b)(1).

“(d) Criminal history record information received under this section shall be disclosed or used only for the purposes set forth in paragraph (b)(1) or for national security or criminal justice purposes authorized by law, and such information shall be made available to the individual who is the subject of such information upon request.”

(b) The table of contents of part III of title 5, United States Code is amended by adding at the end thereof:

**“Subpart H—Access to Criminal History Record Information**

**“91. Access to Criminal History Records for National Security Purposes ..... 9101.”.**

\* \* \* \* \*



**INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR  
1985**

PUBLIC LAW 98-618—November 8, 1984

AN ACT To authorize appropriations for fiscal year 1985 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Intelligence Authorization Act for fiscal year 1985".

\* \* \* \* \*

**TITLE VI—COUNTERINTELLIGENCE AND OFFICIAL  
REPRESENTATION**

**POLICY TOWARD CERTAIN AGENTS OF FOREIGN GOVERNMENTS**

SEC. 601. (a) [22 U.S.C. 254c-1] It is the sense of the Congress that the numbers, status, privileges and immunities, travel, accommodations, and facilities within the United States of official representatives to the United States of any foreign government that engages in intelligence activities within the United States harmful to the national security of the United States should not exceed the respective numbers, status, privileges and immunities, travel accommodations, and facilities within such country of official representatives of the United States to such country.

(b) [22 U.S.C. 254c-1] Beginning one year after the date of enactment of this section, and at intervals of one year thereafter, the President shall prepare and transmit to the Committee on Foreign Relations and Select Committee on Intelligence of the Senate and the Committee on Foreign Affairs and Permanent Select Committee on Intelligence of the House of Representatives a report on the numbers, status, privileges and immunities, travel, accommodations, and facilities within the United States of official representatives to the United States of any foreign government that engages in intelligence activities within the United States harmful to the national security of the United States and the respective numbers, status, privileges and immunities, travel, accommodations, and facilities within such country of official representatives of the United States to such country and any action which may have been taken with respect thereto.

(c) Section 203 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4303) is amended—

- (1) in subsection (a) by striking out the fifth sentence; and
- (2) by amending subsection (b) to read as follows:  
“(b) There shall also be a Deputy Director of the Office of Foreign Missions. Either the Director or the Deputy Director of such

Office shall be an individual who has served in the United States Foreign Service, while the other of the two shall be an individual who has served in the United States Intelligence Community.”

(d) **【22 U.S.C. 4303 nt】** The amendments made by subsection (c) shall apply only with respect to any appointment of a Director or Deputy Director of the Office of Foreign Missions, as the case may be, after the date of enactment of this section.

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**INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR  
1984**

PUBLIC LAW 98-215—December 9, 1983

AN ACT To authorize appropriations for fiscal year 1984 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1984".

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**TITLE IV—ADMINISTRATIVE PROVISIONS RELATED TO THE  
CENTRAL INTELLIGENCE AGENCY AND THE INTEL-  
LIGENCE COMMUNITY STAFF**

\* \* \* \* \*

**ELIGIBILITY FOR INCENTIVE AWARDS**

**SEC. 402. [50 U.S.C. 403e-1]** (a) The Director of Central Intelligence may exercise the authority granted in section 4503 of title 5, United States Code, with respect to Federal employees and members of the Armed Forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff, in the same manner as such authority may be exercised with respect to the personnel of the Central Intelligence Agency and the Intelligence Community Staff.

(b) The authority granted by subsection (a) of this section may be exercised with respect to Federal employees or members of the Armed Forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff on or after a date five years before the date of enactment of this section.

(c) During fiscal year 1987, the Director of Central Intelligence may exercise the authority granted in section 4503(2) of title 5, United States Code, with respect to members of the Armed Forces who are assigned to foreign intelligence duties at the time of the conduct which gives rise to the exercise of such authority.

(d) An award made by the Director of Central Intelligence to an employee or member of the Armed Forces under the authority of section 4503 of title 5, United States Code, or this section may be paid and accepted notwithstanding—

- (1) section 5536 of title 5, United States Code; and
- (2) the death, separation, or retirement of the employee or the member of the Armed Forces whose conduct gave rise to

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the award, or the assignment of such member to duties other than foreign intelligence duties.

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**INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR  
1982**

PUBLIC LAW 97-89—December 4, 1981

AN ACT To authorize appropriations for fiscal year 1982 for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, and for the Central Intelligence Agency Retirement and Disability System, to authorize supplemental appropriations for fiscal year 1981 for the intelligence and intelligence-related activities of the United States Government, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1982".*

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**TITLE VIII—PROVISIONS APPLICABLE TO MORE THAN ONE  
AGENCY AND EFFECTIVE DATE**

**EXCLUSION FROM VETERANS PREFERENCE PROVISIONS**

SEC. 801. Section 2108(3) of title 5, United States Code, is amended by striking out "or the General Accounting Office" and inserting in lieu thereof ", the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, or the General Accounting Office".

**ACCUMULATION OF ANNUAL LEAVE NOT SUBJECT TO LIMITATION**

SEC. 802. Section 6304 of title 5, United States Code, is amended by striking out subsections (f) and (g) and inserting in lieu thereof the following:

"(f) Annual leave accrued shall not be subject to the limitation on accumulation otherwise imposed by this section if such leave is accrued by an individual while serving in a position in—

- "(1) the Senior Executive Service;
- "(2) the Senior Foreign Service;
- "(3) the Defense Intelligence Senior Executive Service; or
- "(4) the Senior Cryptologic Executive Service."

**EARLY RETIREMENT**

SEC. 803. Section 8336 of title 5, United States Code, is amended by inserting "(1)" after "(h)" and by adding at the end thereof the following new paragraph:

"(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for less than fully successful executive performance after completing 25 years of service or after becoming 50

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years of age and completing 20 years of service is entitled to an annuity.”.

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## **LIST OF INTELLIGENCE AUTHORIZATION ACTS**

Intelligence Authorization Act for Fiscal Year 2003; Public Law 107-306; November 27, 2002.

Intelligence Authorization Act for Fiscal Year 2002; Public Law 107-108; December 28, 2001.

Intelligence Authorization Act for Fiscal Year 2001; Public Law 106-567; December 27, 2000.

Intelligence Authorization Act for Fiscal Year 2000; Public Law 106-120; December 3, 1999.

Intelligence Authorization Act for Fiscal Year 1999; Public Law 105-272; October 20, 1998.

Intelligence Authorization Act for Fiscal Year 1998; Public Law 105-107; November 20, 1997.

Intelligence Authorization Act for Fiscal Year 1997; Public Law 104-293, October 11, 1996.

Intelligence Authorization Act for Fiscal Year 1996; Public Law 104-93, January 6, 1996.

Intelligence Authorization Act for Fiscal Year 1995; Public Law 103-359, October 14, 1994.

Intelligence Authorization Act for Fiscal Year 1994; Public Law 103-178, December 3, 1993.

Intelligence Authorization Act for Fiscal Year 1993; Public Law 102-496, October 24, 1992.

Intelligence Authorization Act for Fiscal Year 1992; Public Law 102-183, December 4, 1991.

Intelligence Authorization Act for Fiscal Year 1991; Public Law 102-88, August 14, 1991.

Intelligence Authorization Act for Fiscal Year 1990; Public Law 101-193, November 30, 1989.

Intelligence Authorization Act for Fiscal Year 1989; Public Law 100-453, September 29, 1988.

Intelligence Authorization Act for Fiscal Year 1988; Public Law 100-178, December 2, 1987.

Intelligence Authorization Act for Fiscal Year 1987; Public Law 99-569, October 27, 1986.

Intelligence Authorization Act for Fiscal Year 1986; Public Law 99-169, December 4, 1985.

Intelligence Authorization Act for Fiscal Year 1985; Public Law 98-618, November 8, 1984.

Intelligence Authorization Act for Fiscal Year 1984; Public Law 98-215, December 9, 1983.

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- Intelligence Authorization Act for Fiscal Year 1983 (including the Central Intelligence Agency Spouses' Retirement Equity Act of 1982); Public Law 97-269; September 27, 1982.
- Intelligence Authorization Act for Fiscal Year 1982; Public Law 97-89, December 4, 1981.
- Intelligence Authorization Act for Fiscal Year 1981; Public Law 96-450; October 14, 1980.
- Intelligence and Intelligence-Related Activities Authorization Act for Fiscal Year 1980; Public Law 96-100; November 2, 1979.
- Intelligence and Intelligence-Related Activities Authorization Act for Fiscal Year 1979; Public Law 95-370; September 17, 1978.

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**II. SELECTED LAWS OF INTEREST TO THE  
NATIONAL INTELLIGENCE COMMUNITY**

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## A. USA PATRIOT ACT

### UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT ACT) ACT OF 2001

(Public Law 107–56; 115 Stat. 272; approved October 26, 2001)

AN ACT To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. [18 U.S.C. 1 note] SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Construction; severability.

#### TITLE I—ENHANCING DOMESTIC SECURITY AGAINST TERRORISM

Sec. 101. Counterterrorism fund.

Sec. 102. Sense of Congress condemning discrimination against Arab and Muslim Americans.

Sec. 103. Increased funding for the technical support center at the Federal Bureau of Investigation.

Sec. 104. Requests for military assistance to enforce prohibition in certain emergencies.

Sec. 105. Expansion of National Electronic Crime Task Force Initiative.

Sec. 106. Presidential authority.

#### TITLE II—ENHANCED SURVEILLANCE PROCEDURES

Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorism.

Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses.

Sec. 203. Authority to share criminal investigative information.

Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications.

Sec. 205. Employment of translators by the Federal Bureau of Investigation.

Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.

Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of a foreign power.

Sec. 208. Designation of judges.

Sec. 209. Seizure of voice-mail messages pursuant to warrants.

Sec. 210. Scope of subpoenas for records of electronic communications.

Sec. 211. Clarification of scope.

Sec. 212. Emergency disclosure of electronic communications to protect life and limb.

Sec. 213. Authority for delaying notice of the execution of a warrant.

- Sec. 214. Pen register and trap and trace authority under FISA.
- Sec. 215. Access to records and other items under the Foreign Intelligence Surveillance Act.
- Sec. 216. Modification of authorities relating to use of pen registers and trap and trace devices.
- Sec. 217. Interception of computer trespasser communications.
- Sec. 218. Foreign intelligence information.
- Sec. 219. Single-jurisdiction search warrants for terrorism.
- Sec. 220. Nationwide service of search warrants for electronic evidence.
- Sec. 221. Trade sanctions.
- Sec. 222. Assistance to law enforcement agencies.
- Sec. 223. Civil liability for certain unauthorized disclosures.
- Sec. 224. Sunset.
- Sec. 225. Immunity for compliance with FISA wiretap.

TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND ANTI-TERRORIST FINANCING ACT OF 2001

- Sec. 301. Short title.
- Sec. 302. Findings and purposes.
- Sec. 303. 4-year congressional review; expedited consideration.

Subtitle A—International Counter Money Laundering and Related Measures

- Sec. 311. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.
- Sec. 312. Special due diligence for correspondent accounts and private banking accounts.
- Sec. 313. Prohibition on United States correspondent accounts with foreign shell banks.
- Sec. 314. Cooperative efforts to deter money laundering.
- Sec. 315. Inclusion of foreign corruption offenses as money laundering crimes.
- Sec. 316. Anti-terrorist forfeiture protection.
- Sec. 317. Long-arm jurisdiction over foreign money launderers.
- Sec. 318. Laundering money through a foreign bank.
- Sec. 319. Forfeiture of funds in United States interbank accounts.
- Sec. 320. Proceeds of foreign crimes.
- Sec. 321. Financial institutions specified in subchapter II of chapter 53 of title 31, United States code.
- Sec. 322. Corporation represented by a fugitive.
- Sec. 323. Enforcement of foreign judgments.
- Sec. 324. Report and recommendation.
- Sec. 325. Concentration accounts at financial institutions.
- Sec. 326. Verification of identification.
- Sec. 327. Consideration of anti-money laundering record.
- Sec. 328. International cooperation on identification of originators of wire transfers.
- Sec. 329. Criminal penalties.
- Sec. 330. International cooperation in investigations of money laundering, financial crimes, and the finances of terrorist groups.

Subtitle B—Bank Secrecy Act Amendments and Related Improvements

- Sec. 351. Amendments relating to reporting of suspicious activities.
- Sec. 352. Anti-money laundering programs.
- Sec. 353. Penalties for violations of geographic targeting orders and certain record-keeping requirements, and lengthening effective period of geographic targeting orders.
- Sec. 354. Anti-money laundering strategy.
- Sec. 355. Authorization to include suspicions of illegal activity in written employment references.
- Sec. 356. Reporting of suspicious activities by securities brokers and dealers; investment company study.
- Sec. 357. Special report on administration of bank secrecy provisions.
- Sec. 358. Bank secrecy provisions and activities of United States intelligence agencies to fight international terrorism.
- Sec. 359. Reporting of suspicious activities by underground banking systems.
- Sec. 360. Use of authority of United States Executive Directors.
- Sec. 361. Financial crimes enforcement network.
- Sec. 362. Establishment of highly secure network.
- Sec. 363. Increase in civil and criminal penalties for money laundering.
- Sec. 364. Uniform protection authority for Federal Reserve facilities.

- Sec. 365. Reports relating to coins and currency received in nonfinancial trade or business.
- Sec. 366. Efficient use of currency transaction report system.

Subtitle C—Currency Crimes and Protection

- Sec. 371. Bulk cash smuggling into or out of the United States.
- Sec. 372. Forfeiture in currency reporting cases.
- Sec. 373. Illegal money transmitting businesses.
- Sec. 374. Counterfeiting domestic currency and obligations.
- Sec. 375. Counterfeiting foreign currency and obligations.
- Sec. 376. Laundering the proceeds of terrorism.
- Sec. 377. Extraterritorial jurisdiction.

TITLE IV—PROTECTING THE BORDER

Subtitle A—Protecting the Northern Border

- Sec. 401. Ensuring adequate personnel on the northern border.
- Sec. 402. Northern border personnel.
- Sec. 403. Access by the Department of State and the INS to certain identifying information in the criminal history records of visa applicants and applicants for admission to the United States.
- Sec. 404. Limited authority to pay overtime.
- Sec. 405. Report on the integrated automated fingerprint identification system for ports of entry and overseas consular posts.

Subtitle B—Enhanced Immigration Provisions

- Sec. 411. Definitions relating to terrorism.
- Sec. 412. Mandatory detention of suspected terrorists; habeas corpus; judicial review.
- Sec. 413. Multilateral cooperation against terrorists.
- Sec. 414. Visa integrity and security.
- Sec. 415. Participation of Office of Homeland Security on Entry-Exit Task Force.
- Sec. 416. Foreign student monitoring program.
- Sec. 417. Machine readable passports.
- Sec. 418. Prevention of consulate shopping.

Subtitle C—Preservation of Immigration Benefits for Victims of Terrorism

- Sec. 421. Special immigrant status.
- Sec. 422. Extension of filing or reentry deadlines.
- Sec. 423. Humanitarian relief for certain surviving spouses and children.
- Sec. 424. "Age-out" protection for children.
- Sec. 425. Temporary administrative relief.
- Sec. 426. Evidence of death, disability, or loss of employment.
- Sec. 427. No benefits to terrorists or family members of terrorists.
- Sec. 428. Definitions.

TITLE V—REMOVING OBSTACLES TO INVESTIGATING TERRORISM

- Sec. 501. Attorney General's authority to pay rewards to combat terrorism.
- Sec. 502. Secretary of State's authority to pay rewards.
- Sec. 503. DNA identification of terrorists and other violent offenders.
- Sec. 504. Coordination with law enforcement.
- Sec. 505. Miscellaneous national security authorities.
- Sec. 506. Extension of Secret Service jurisdiction.
- Sec. 507. Disclosure of educational records.
- Sec. 508. Disclosure of information from NCES surveys.

TITLE VI—PROVIDING FOR VICTIMS OF TERRORISM, PUBLIC SAFETY OFFICERS, AND THEIR FAMILIES

Subtitle A—Aid to Families of Public Safety Officers

- Sec. 611. Expedited payment for public safety officers involved in the prevention, investigation, rescue, or recovery efforts related to a terrorist attack.
- Sec. 612. Technical correction with respect to expedited payments for heroic public safety officers.
- Sec. 613. Public safety officers benefit program payment increase.
- Sec. 614. Office of Justice programs.

## Subtitle B—Amendments to the Victims of Crime Act of 1984

- Sec. 621. Crime victims fund.
- Sec. 622. Crime victim compensation.
- Sec. 623. Crime victim assistance.
- Sec. 624. Victims of terrorism.

## TITLE VII—INCREASED INFORMATION SHARING FOR CRITICAL INFRASTRUCTURE PROTECTION

- Sec. 701. Expansion of regional information sharing system to facilitate Federal-State-local law enforcement response related to terrorist attacks.

## TITLE VIII—STRENGTHENING THE CRIMINAL LAWS AGAINST TERRORISM

- Sec. 801. Terrorist attacks and other acts of violence against mass transportation systems.
- Sec. 802. Definition of domestic terrorism.
- Sec. 803. Prohibition against harboring terrorists.
- Sec. 804. Jurisdiction over crimes committed at U.S. facilities abroad.
- Sec. 805. Material support for terrorism.
- Sec. 806. Assets of terrorist organizations.
- Sec. 807. Technical clarification relating to provision of material support to terrorism.
- Sec. 808. Definition of Federal crime of terrorism.
- Sec. 809. No statute of limitation for certain terrorism offenses.
- Sec. 810. Alternate maximum penalties for terrorism offenses.
- Sec. 811. Penalties for terrorist conspiracies.
- Sec. 812. Post-release supervision of terrorists.
- Sec. 813. Inclusion of acts of terrorism as racketeering activity.
- Sec. 814. Deterrence and prevention of cyberterrorism.
- Sec. 815. Additional defense to civil actions relating to preserving records in response to Government requests.
- Sec. 816. Development and support of cybersecurity forensic capabilities.
- Sec. 817. Expansion of the biological weapons statute.

## TITLE IX—IMPROVED INTELLIGENCE

- Sec. 901. Responsibilities of Director of Central Intelligence regarding foreign intelligence collected under Foreign Intelligence Surveillance Act of 1978.
- Sec. 902. Inclusion of international terrorist activities within scope of foreign intelligence under National Security Act of 1947.
- Sec. 903. Sense of Congress on the establishment and maintenance of intelligence relationships to acquire information on terrorists and terrorist organizations.
- Sec. 904. Temporary authority to defer submittal to Congress of reports on intelligence and intelligence-related matters.
- Sec. 905. Disclosure to Director of Central Intelligence of foreign intelligence-related information with respect to criminal investigations.
- Sec. 906. Foreign terrorist asset tracking center.
- Sec. 907. National Virtual Translation Center.
- Sec. 908. Training of government officials regarding identification and use of foreign intelligence.

## TITLE X—MISCELLANEOUS

- Sec. 1001. Review of the department of justice.
- Sec. 1002. Sense of congress.
- Sec. 1003. Definition of "electronic surveillance".
- Sec. 1004. Venue in money laundering cases.
- Sec. 1005. First responders assistance act.
- Sec. 1006. Inadmissibility of aliens engaged in money laundering.
- Sec. 1007. Authorization of funds for dea police training in south and central asia.
- Sec. 1008. Feasibility study on use of biometric identifier scanning system with access to the fbi integrated automated fingerprint identification system at overseas consular posts and points of entry to the United States.
- Sec. 1009. Study of access.
- Sec. 1010. Temporary authority to contract with local and State governments for performance of security functions at United States military installations.
- Sec. 1011. Crimes against charitable americans.
- Sec. 1012. Limitation on issuance of hazmat licenses.

- Sec. 1013. Expressing the sense of the senate concerning the provision of funding for bioterrorism preparedness and response.
- Sec. 1014. Grant program for State and local domestic preparedness support.
- Sec. 1015. Expansion and reauthorization of the crime identification technology act for antiterrorism grants to States and localities.
- Sec. 1016. Critical infrastructures protection.

**SEC. 2. [18 U.S.C. 1 note] CONSTRUCTION; SEVERABILITY.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

## **TITLE I—ENHANCING DOMESTIC SECURITY AGAINST TERRORISM**

**SEC. 101. [28 U.S.C. 524 note] COUNTERTERRORISM FUND.**

(a) ESTABLISHMENT; AVAILABILITY.—There is hereby established in the Treasury of the United States a separate fund to be known as the “Counterterrorism Fund”, amounts in which shall remain available without fiscal year limitation—

(1) to reimburse any Department of Justice component for any costs incurred in connection with—

(A) reestablishing the operational capability of an office or facility that has been damaged or destroyed as the result of any domestic or international terrorism incident;

(B) providing support to counter, investigate, or prosecute domestic or international terrorism, including, without limitation, paying rewards in connection with these activities; and

(C) conducting terrorism threat assessments of Federal agencies and their facilities; and

(2) to reimburse any department or agency of the Federal Government for any costs incurred in connection with detaining in foreign countries individuals accused of acts of terrorism that violate the laws of the United States.

(b) NO EFFECT ON PRIOR APPROPRIATIONS.—Subsection (a) shall not be construed to affect the amount or availability of any appropriation to the Counterterrorism Fund made before the date of the enactment of this Act.

**SEC. 102. SENSE OF CONGRESS CONDEMNING DISCRIMINATION AGAINST ARAB AND MUSLIM AMERICANS.**

(a) FINDINGS.—Congress makes the following findings:

(1) Arab Americans, Muslim Americans, and Americans from South Asia play a vital role in our Nation and are entitled to nothing less than the full rights of every American.

(2) The acts of violence that have been taken against Arab and Muslim Americans since the September 11, 2001, attacks against the United States should be and are condemned by all Americans who value freedom.

(3) The concept of individual responsibility for wrongdoing is sacrosanct in American society, and applies equally to all religious, racial, and ethnic groups.

(4) When American citizens commit acts of violence against those who are, or are perceived to be, of Arab or Muslim descent, they should be punished to the full extent of the law.

(5) Muslim Americans have become so fearful of harassment that many Muslim women are changing the way they dress to avoid becoming targets.

(6) Many Arab Americans and Muslim Americans have acted heroically during the attacks on the United States, including Mohammed Salman Hamdani, a 23-year-old New Yorker of Pakistani descent, who is believed to have gone to the World Trade Center to offer rescue assistance and is now missing.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the civil rights and civil liberties of all Americans, including Arab Americans, Muslim Americans, and Americans from South Asia, must be protected, and that every effort must be taken to preserve their safety;

(2) any acts of violence or discrimination against any Americans be condemned; and

(3) the Nation is called upon to recognize the patriotism of fellow citizens from all ethnic, racial, and religious backgrounds.

**SEC. 103. INCREASED FUNDING FOR THE TECHNICAL SUPPORT CENTER AT THE FEDERAL BUREAU OF INVESTIGATION.**

There are authorized to be appropriated for the Technical Support Center established in section 811 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) to help meet the demands for activities to combat terrorism and support and enhance the technical support and tactical operations of the FBI, \$200,000,000 for each of the fiscal years 2002, 2003, and 2004.

**SEC. 104. REQUESTS FOR MILITARY ASSISTANCE TO ENFORCE PROHIBITION IN CERTAIN EMERGENCIES.**

Section 2332e of title 18, United States Code, is amended—

(1) by striking “2332c” and inserting “2332a”; and

(2) by striking “chemical”.

**SEC. 105. [18 U.S.C. 3056 note] EXPANSION OF NATIONAL ELECTRONIC CRIME TASK FORCE INITIATIVE.**

The Director of the United States Secret Service shall take appropriate actions to develop a national network of electronic crime task forces, based on the New York Electronic Crimes Task Force model, throughout the United States, for the purpose of preventing, detecting, and investigating various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems.

**SEC. 106. PRESIDENTIAL AUTHORITY.**

Section 203 of the International Emergency Powers Act<sup>1</sup> (50 U.S.C. 1702) is amended—

(1) in subsection (a)(1)—

<sup>1</sup> So in law. Should probably be “International Emergency Economic Powers Act”.

(A) at the end of subparagraph (A) (flush to that subparagraph), by striking “; and” and inserting a comma and the following:

“by any person, or with respect to any property, subject to the jurisdiction of the United States;”;

(B) in subparagraph (B)—

(i) by inserting “, block during the pendency of an investigation” after “investigate”; and

(ii) by striking “interest;” and inserting “interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and”;

(C) by striking “by any person, or with respect to any property, subject to the jurisdiction of the United States<sup>2</sup>; and

(D) by inserting at the end the following:

“(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.”; and

(2) by inserting at the end the following:

“(c) CLASSIFIED INFORMATION.—In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.”.

## TITLE II—ENHANCED SURVEILLANCE PROCEDURES

### SEC. 201. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO TERRORISM.

Section 2516(1) of title 18, United States Code, is amended—

(1) by redesignating paragraph (p), as so redesignated by section 434(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat. 1274), as paragraph (r); and

(2) by inserting after paragraph (p), as so redesignated by section 201(3) of the Illegal Immigration Reform and Immi-

<sup>2</sup>So in law. Should probably have close quotation mark after “State”.

grant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–565), the following new paragraph:

“(q) any criminal violation of section 229 (relating to chemical weapons); or sections 2332, 2332a, 2332b, 2332d, 2339A, or 2339B of this title (relating to terrorism); or”.

**SEC. 202. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO COMPUTER FRAUD AND ABUSE OFFENSES.**

Section 2516(1)(c) of title 18, United States Code, is amended by striking “and section 1341 (relating to mail fraud),” and inserting “section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse),”.

**SEC. 203. [50 U.S.C. App.] AUTHORITY TO SHARE CRIMINAL INVESTIGATIVE INFORMATION.**

(a) AUTHORITY TO SHARE GRAND JURY INFORMATION.—

(1) IN GENERAL.—Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended to read as follows:

“(C)(i) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

“(I) when so directed by a court preliminarily to or in connection with a judicial proceeding;

“(II) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

“(III) when the disclosure is made by an attorney for the government to another Federal grand jury;

“(IV) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such law; or

“(V) when the matters involve foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in clause (iv) of this subparagraph), to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties.

“(ii) If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

“(iii) Any Federal official to whom information is disclosed pursuant to clause (i)(V) of this subparagraph may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information. Within a reasonable time after such disclosure, an attorney for the government shall file under seal a notice with the court stating the fact that such information was disclosed and

the departments, agencies, or entities to which the disclosure was made.

“(iv) In clause (i)(V) of this subparagraph, the term ‘foreign intelligence information’ means—

“(I) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

“(aa) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

“(bb) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

“(cc) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of foreign power; or

“(II) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

“(aa) the national defense or the security of the United States; or

“(bb) the conduct of the foreign affairs of the United States.”

(2) CONFORMING AMENDMENT.—Rule 6(e)(3)(D) of the Federal Rules of Criminal Procedure is amended by striking “(e)(3)(C)(i)” and inserting “(e)(3)(C)(i)(I)”.

(b) AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.—

(1) LAW ENFORCEMENT.—Section 2517 of title 18, United States Code, is amended by inserting at the end the following:

“(6) Any investigative or law enforcement officer, or attorney for the Government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official to the extent that such contents include foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title), to assist the official who is to receive that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information.”

(2) DEFINITION.—Section 2510 of title 18, United States Code, is amended by—

(A) in paragraph (17), by striking “and” after the semicolon;

(B) in paragraph (18), by striking the period and inserting “; and”; and

(C) by inserting at the end the following:

“(19) ‘foreign intelligence information’ means—

“(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

“(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

“(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

“(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

“(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

“(i) the national defense or the security of the United States; or

“(ii) the conduct of the foreign affairs of the United States.”.

(c) PROCEDURES.—The Attorney General shall establish procedures for the disclosure of information pursuant to paragraphs (6) and (8) of section 2517 of title 18, United States Code, and Rule 6(e)(3)(C)(i)(V) and (VI) of the Federal Rules of Criminal Procedure that identifies a United States person, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)).

(d) [50 U.S.C. 403–5d] FOREIGN INTELLIGENCE INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, it shall be lawful for foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)) or foreign intelligence information obtained as part of a criminal investigation to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information. Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that in-

formation only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.

(2) DEFINITION.—In this subsection, the term “foreign intelligence information” means—

(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

(i) the national defense or the security of the United States; or

(ii) the conduct of the foreign affairs of the United States.

**SEC. 204. CLARIFICATION OF INTELLIGENCE EXCEPTIONS FROM LIMITATIONS ON INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.**

Section 2511(2)(f) of title 18, United States Code, is amended—

(1) by striking “this chapter or chapter 121” and inserting “this chapter or chapter 121 or 206 of this title”; and

(2) by striking “wire and oral” and inserting “wire, oral, and electronic”.

**SEC. 205. [28 U.S.C. 532 note] EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION.**

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators under subsection (a).

(c) REPORT.—The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of translators employed by the FBI and other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis; and

(3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

**SEC. 206. ROVING SURVEILLANCE AUTHORITY UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by inserting “, or in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons,” after “specified person”.

**SEC. 207. DURATION OF FISA SURVEILLANCE OF NON-UNITED STATES PERSONS WHO ARE AGENTS OF A FOREIGN POWER.****(a) DURATION.—**

(1) **SURVEILLANCE.**—Section 105(e)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)(1)) is amended by—

(A) inserting “(A)” after “except that”; and

(B) inserting before the period the following: “, and (B)

an order under this Act for a surveillance targeted against an agent of a foreign power, as defined in section 101(b)(1)(A) may be for the period specified in the application or for 120 days, whichever is less”.

(2) **PHYSICAL SEARCH.**—Section 304(d)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824(d)(1)) is amended by—

(A) striking “forty-five” and inserting “90”;

(B) inserting “(A)” after “except that”; and

(C) inserting before the period the following: “, and (B) an order under this section for a physical search targeted against an agent of a foreign power as defined in section 101(b)(1)(A) may be for the period specified in the application or for 120 days, whichever is less”.

**(b) EXTENSION.—**

(1) **IN GENERAL.**—Section 105(e)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)(2)) is amended by—

(A) inserting “(A)” after “except that”; and

(B) inserting before the period the following: “, and (B) an extension of an order under this Act for a surveillance targeted against an agent of a foreign power as defined in section 101(b)(1)(A) may be for a period not to exceed 1 year”.

(2) **DEFINED TERM.**—Section 304(d)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824(d)(2)) is amended by inserting after “not a United States person,” the following: “or against an agent of a foreign power as defined in section 101(b)(1)(A),”.

**SEC. 208. DESIGNATION OF JUDGES.**

Section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended by—

(1) striking “seven district court judges” and inserting “11 district court judges”; and

(2) inserting “of whom no fewer than 3 shall reside within 20 miles of the District of Columbia” after “circuits”.

**SEC. 209. SEIZURE OF VOICE-MAIL MESSAGES PURSUANT TO WARRANTS.**

Title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (1), by striking beginning with “and such” and all that follows through “communication”; and

(B) in paragraph (14), by inserting “wire or” after “transmission of”; and

(2) in subsections (a) and (b) of section 2703—

(A) by striking “CONTENTS OF ELECTRONIC” and inserting “CONTENTS OF WIRE OR ELECTRONIC” each place it appears;

(B) by striking “contents of an electronic” and inserting “contents of a wire or electronic” each place it appears; and

(C) by striking “any electronic” and inserting “any wire or electronic” each place it appears.

**SEC. 210. SCOPE OF SUBPOENAS FOR RECORDS OF ELECTRONIC COMMUNICATIONS.**

Section 2703(c)(2) of title 18, United States Code, as redesignated by section 212, is amended—

(1) by striking “entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber” and inserting the following: “entity the—

“(A) name;

“(B) address;

“(C) local and long distance telephone connection records, or records of session times and durations;

“(D) length of service (including start date) and types of service utilized;

“(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

“(F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber”; and

(2) by striking “and the types of services the subscriber or customer utilized.”.

**SEC. 211. CLARIFICATION OF SCOPE.**

Section 631 of the Communications Act of 1934 (47 U.S.C. 551) is amended—

(1) in subsection (c)(2)—

(A) in subparagraph (B), by striking “or”;

(B) in subparagraph (C), by striking the period at the end and inserting “; or”; and

(C) by inserting at the end the following:

“(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include records revealing cable subscriber selection of video programming from a cable operator.”; and

(2) in subsection (h), by striking “A governmental entity” and inserting “Except as provided in subsection (c)(2)(D), a governmental entity”.

**SEC. 212. EMERGENCY DISCLOSURE OF ELECTRONIC COMMUNICATIONS TO PROTECT LIFE AND LIMB.****(a) DISCLOSURE OF CONTENTS.—**

(1) IN GENERAL.—Section 2702 of title 18, United States Code, is amended—

(A) by striking the section heading and inserting the following:

**“§ 2702. Voluntary disclosure of customer communications or records”;**

(B) in subsection (a)—

(i) in paragraph (2)(A), by striking “and” at the end;

(ii) in paragraph (2)(B), by striking the period and inserting “; and”; and

(iii) by inserting after paragraph (2) the following:

“(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.”;

(C) in subsection (b), by striking “EXCEPTIONS.—A person or entity” and inserting “EXCEPTIONS FOR DISCLOSURE OF COMMUNICATIONS.— A provider described in subsection (a)”;

(D) in subsection (b)(6)—

(i) in subparagraph (A)(ii), by striking “or”;

(ii) in subparagraph (B), by striking the period and inserting “; or”; and

(iii) by adding after subparagraph (B) the following:

“(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.”; and

(E) by inserting after subsection (b) the following:

“(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

“(1) as otherwise authorized in section 2703;

“(2) with the lawful consent of the customer or subscriber;

“(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

“(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

“(5) to any person other than a governmental entity.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 121 of title 18, United States Code, is

amended by striking the item relating to section 2702 and inserting the following:

“2702. Voluntary disclosure of customer communications or records.”.

(b) REQUIREMENTS FOR GOVERNMENT ACCESS.—

(1) IN GENERAL.—Section 2703 of title 18, United States Code, is amended—

(A) by striking the section heading and inserting the following:

**“§ 2703. Required disclosure of customer communications or records”;**

(B) in subsection (c) by redesignating paragraph (2) as paragraph (3);

(C) in subsection (c)(1)—

(i) by striking “(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may” and inserting “A governmental entity may require a provider of electronic communication service or remote computing service to”;

(ii) by striking “covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

“(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity” and inserting “);

(iii) by redesignating subparagraph (C) as paragraph (2);

(iv) by redesignating clauses (i), (ii), (iii), and (iv) as subparagraphs (A), (B), (C), and (D), respectively;

(v) in subparagraph (D) (as redesignated) by striking the period and inserting “; or”; and

(vi) by inserting after subparagraph (D) (as redesignated) the following:

“(E) seeks information under paragraph (2).”; and

(D) in paragraph (2) (as redesignated) by striking “subparagraph (B)” and insert “paragraph (1)”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 121 of title 18, United States Code, is amended by striking the item relating to section 2703 and inserting the following:

“2703. Required disclosure of customer communications or records.”.

**SEC. 213. AUTHORITY FOR DELAYING NOTICE OF THE EXECUTION OF A WARRANT.**

Section 3103a of title 18, United States Code, is amended—

(1) by inserting “(a) IN GENERAL.—” before “In addition”; and

(2) by adding at the end the following:

“(b) DELAY.—With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States, any

notice required, or that may be required, to be given may be delayed if—

“(1) the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result (as defined in section 2705);

“(2) the warrant prohibits the seizure of any tangible property, any wire or electronic communication (as defined in section 2510), or, except as expressly provided in chapter 121, any stored wire or electronic information, except where the court finds reasonable necessity for the seizure; and

“(3) the warrant provides for the giving of such notice within a reasonable period of its execution, which period may thereafter be extended by the court for good cause shown.”.

**SEC. 214. PEN REGISTER AND TRAP AND TRACE AUTHORITY UNDER FISA.**

(a) APPLICATIONS AND ORDERS.—Section 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842) is amended—

(1) in subsection (a)(1), by striking “for any investigation to gather foreign intelligence information or information concerning international terrorism” and inserting “for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution”;

(2) by amending subsection (c)(2) to read as follows:

“(2) a certification by the applicant that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.”;

(3) by striking subsection (c)(3); and

(4) by amending subsection (d)(2)(A) to read as follows:

“(A) shall specify—

“(i) the identity, if known, of the person who is the subject of the investigation;

“(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

“(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order.”.

(b) AUTHORIZATION DURING EMERGENCIES.—Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a), by striking “foreign intelligence information or information concerning international terrorism” and inserting “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution”; and

(2) in subsection (b)(1), by striking “foreign intelligence information or information concerning international terrorism” and inserting “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution”.

**SEC. 215. ACCESS TO RECORDS AND OTHER ITEMS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT.**

Title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is amended by striking sections 501 through 503 and inserting the following:

**“SEC. 501. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.**

“(a)(1) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

“(2) An investigation conducted under this section shall—

“(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

“(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

“(b) Each application under this section—

“(1) shall be made to—

“(A) a judge of the court established by section 103(a);

or

“(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

“(2) shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

“(c)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

“(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

“(d) No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.

“(e) A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

**“SEC. 502. CONGRESSIONAL OVERSIGHT.**

“(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for the production of tangible things under section 402.

“(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

“(1) the total number of applications made for orders approving requests for the production of tangible things under section 402; and

“(2) the total number of such orders either granted, modified, or denied.”.

**SEC. 216. MODIFICATION OF AUTHORITIES RELATING TO USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.**

(a) GENERAL LIMITATIONS.—Section 3121(c) of title 18, United States Code, is amended—

(1) by inserting “or trap and trace device” after “pen register”;

(2) by inserting “, routing, addressing,” after “dialing”; and

(3) by striking “call processing” and inserting “the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications”.

(b) ISSUANCE OF ORDERS.—

(1) IN GENERAL.—Section 3123(a) of title 18, United States Code, is amended to read as follows:

“(a) IN GENERAL.—

“(1) ATTORNEY FOR THE GOVERNMENT.—Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order, upon service of that order, shall apply to any person or entity providing wire or electronic

communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the order applies to the person or entity being served.

“(2) STATE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER.—Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

“(3)(A) Where the law enforcement agency implementing an ex parte order under this subsection seeks to do so by installing and using its own pen register or trap and trace device on a packet-switched data network of a provider of electronic communication service to the public, the agency shall ensure that a record will be maintained which will identify—

“(i) any officer or officers who installed the device and any officer or officers who accessed the device to obtain information from the network;

“(ii) the date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information;

“(iii) the configuration of the device at the time of its installation and any subsequent modification thereof; and

“(iv) any information which has been collected by the device.

To the extent that the pen register or trap and trace device can be set automatically to record this information electronically, the record shall be maintained electronically throughout the installation and use of such device.

“(B) The record maintained under subparagraph (A) shall be provided ex parte and under seal to the court which entered the ex parte order authorizing the installation and use of the device within 30 days after termination of the order (including any extensions thereof).”.

(2) CONTENTS OF ORDER.—Section 3123(b)(1) of title 18, United States Code, is amended—

(A) in subparagraph (A)—

(i) by inserting “or other facility” after “telephone line”; and

(ii) by inserting before the semicolon at the end “or applied”; and

(B) by striking subparagraph (C) and inserting the following:

“(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device

is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and”.

(3) NONDISCLOSURE REQUIREMENTS.—Section 3123(d)(2) of title 18, United States Code, is amended—

(A) by inserting “or other facility” after “the line”; and

(B) by striking “, or who has been ordered by the court” and inserting “or applied, or who is obligated by the order”.

(c) DEFINITIONS.—

(1) COURT OF COMPETENT JURISDICTION.—Section 3127(2) of title 18, United States Code, is amended by striking subparagraph (A) and inserting the following:

“(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals having jurisdiction over the offense being investigated; or”.

(2) PEN REGISTER.—Section 3127(3) of title 18, United States Code, is amended—

(A) by striking “electronic or other impulses” and all that follows through “is attached” and inserting “dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication”; and

(B) by inserting “or process” after “device” each place it appears.

(3) TRAP AND TRACE DEVICE.—Section 3127(4) of title 18, United States Code, is amended—

(A) by striking “of an instrument” and all that follows through the semicolon and inserting “or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication, provided, however, that such information shall not include the contents of any communication;”; and

(B) by inserting “or process” after “a device”.

(4) CONFORMING AMENDMENT.—Section 3127(1) of title 18, United States Code, is amended—

(A) by striking “and”; and

(B) by inserting “, and ‘contents’” after “electronic communication service”.

(5) TECHNICAL AMENDMENT.—Section 3124(d) of title 18, United States Code, is amended by striking “the terms of”.

(6) CONFORMING AMENDMENT.—Section 3124(b) of title 18, United States Code, is amended by inserting “or other facility” after “the appropriate line”.

**SEC. 217. INTERCEPTION OF COMPUTER TRESPASSER COMMUNICATIONS.**

Chapter 119 of title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (18), by striking “and” at the end;

(B) in paragraph (19), by striking the period and inserting a semicolon; and

- (C) by inserting after paragraph (19) the following:
- “(20) ‘protected computer’ has the meaning set forth in section 1030; and
- “(21) ‘computer trespasser’—
- “(A) means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and
- “(B) does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.”; and
- (2) in section 2511(2), by inserting at the end the following:
- “(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser transmitted to, through, or from the protected computer, if—
- “(I) the owner or operator of the protected computer authorizes the interception of the computer trespasser’s communications on the protected computer;
- “(II) the person acting under color of law is lawfully engaged in an investigation;
- “(III) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser’s communications will be relevant to the investigation; and
- “(IV) such interception does not acquire communications other than those transmitted to or from the computer trespasser.”.

**SEC. 218. FOREIGN INTELLIGENCE INFORMATION.**

Sections 104(a)(7)(B) and section 303(a)(7)(B) (50 U.S.C. 1804(a)(7)(B) and 1823(a)(7)(B)) of the Foreign Intelligence Surveillance Act of 1978 are each amended by striking “the purpose” and inserting “a significant purpose”.

**SEC. 219. [18 U.S.C. App.] SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.**

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after “executed” the following: “and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a Federal magistrate judge in any district in which activities related to the terrorism may have occurred, for a search of property or for a person within or outside the district”.

**SEC. 220. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.**

(a) IN GENERAL.—Chapter 121 of title 18, United States Code, is amended—

- (1) in section 2703, by striking “under the Federal Rules of Criminal Procedure” every place it appears and inserting “using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation”; and

(2) in section 2711—

- (A) in paragraph (1), by striking “and”;
- (B) in paragraph (2), by striking the period and inserting “; and”; and
- (C) by inserting at the end the following:
  - “(3) the term ‘court of competent jurisdiction’ has the meaning assigned by section 3127, and includes any Federal court within that definition, without geographic limitation.”.
- (b) CONFORMING AMENDMENT.—Section 2703(d) of title 18, United States Code, is amended by striking “described in section 3127(2)(A)”.

**SEC. 221. TRADE SANCTIONS.**

(a) IN GENERAL.—The Trade Sanctions Reform and Export Enhancement Act of 2000 (Public Law 106–387; 114 Stat. 1549A–67) is amended—

- (1) by amending section 904(2)(C) to read as follows:
  - “(C) used to facilitate the design, development, or production of chemical or biological weapons, missiles, or weapons of mass destruction.”;
- (2) in section 906(a)(1)—
  - (A) by inserting “, the Taliban or the territory of Afghanistan controlled by the Taliban,” after “Cuba”; and
  - (B) by inserting “, or in the territory of Afghanistan controlled by the Taliban,” after “within such country”; and
- (3) in section 906(a)(2), by inserting “, or to any other entity in Syria or North Korea” after “Korea”.

(b) [22 U.S.C. 7210] APPLICATION OF THE TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT.—Nothing in the Trade Sanctions Reform and Export Enhancement Act of 2000 shall limit the application or scope of any law establishing criminal or civil penalties, including any Executive order or regulation promulgated pursuant to such laws (or similar or successor laws), for the unlawful export of any agricultural commodity, medicine, or medical device to—

- (1) a foreign organization, group, or person designated pursuant to Executive Order No. 12947 of January 23, 1995, as amended;
- (2) a Foreign Terrorist Organization pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132);
- (3) a foreign organization, group, or person designated pursuant to Executive Order No. 13224 (September 23, 2001);
- (4) any narcotics trafficking entity designated pursuant to Executive Order No. 12978 (October 21, 1995) or the Foreign Narcotics Kingpin Designation Act (Public Law 106–120); or
- (5) any foreign organization, group, or persons subject to any restriction for its involvement in weapons of mass destruction or missile proliferation.

**SEC. 222. [18 U.S.C. 3124 note] ASSISTANCE TO LAW ENFORCEMENT AGENCIES.**

Nothing in this Act shall impose any additional technical obligation or requirement on a provider of a wire or electronic communication service or other person to furnish facilities or technical assistance. A provider of a wire or electronic communication service,

landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to section 216 shall be reasonably compensated for such reasonable expenditures incurred in providing such facilities or assistance.

**SEC. 223. CIVIL LIABILITY FOR CERTAIN UNAUTHORIZED DISCLOSURES.**

(a) Section 2520 of title 18, United States Code, is amended—

(1) in subsection (a), after “entity”, by inserting “, other than the United States.”;

(2) by adding at the end the following:

“(f) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.”; and

(3) by adding a new subsection (g), as follows:

“(g) IMPROPER DISCLOSURE IS VIOLATION.—Any willful disclosure or use by an investigative or law enforcement officer or governmental entity of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2520(a).”.

(b) Section 2707 of title 18, United States Code, is amended—

(1) in subsection (a), after “entity”, by inserting “, other than the United States.”;

(2) by striking subsection (d) and inserting the following:

“(d) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.”; and

(3) by adding a new subsection (g), as follows:

“(g) IMPROPER DISCLOSURE.—Any willful disclosure of a ‘record’, as that term is defined in section 552a(a) of title 5, United

States Code, obtained by an investigative or law enforcement officer, or a governmental entity, pursuant to section 2703 of this title, or from a device installed pursuant to section 3123 or 3125 of this title, that is not a disclosure made in the proper performance of the official functions of the officer or governmental entity making the disclosure, is a violation of this chapter. This provision shall not apply to information previously lawfully disclosed (prior to the commencement of any civil or administrative proceeding under this chapter) to the public by a Federal, State, or local governmental entity or by the plaintiff in a civil action under this chapter.”

(c)(1) Chapter 121 of title 18, United States Code, is amended by adding at the end the following:

**“§ 2712. Civil actions against the United States**

“(a) IN GENERAL.—Any person who is aggrieved by any willful violation of this chapter or of chapter 119 of this title or of sections 106(a), 305(a), or 405(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) may commence an action in United States District Court against the United States to recover money damages. In any such action, if a person who is aggrieved successfully establishes such a violation of this chapter or of chapter 119 of this title or of the above specific provisions of title 50, the Court may assess as damages—

“(1) actual damages, but not less than \$10,000, whichever amount is greater; and

“(2) litigation costs, reasonably incurred.

“(b) PROCEDURES.—(1) Any action against the United States under this section may be commenced only after a claim is presented to the appropriate department or agency under the procedures of the Federal Tort Claims Act, as set forth in title 28, United States Code.

“(2) Any action against the United States under this section shall be forever barred unless it is presented in writing to the appropriate Federal agency within 2 years after such claim accrues or unless action is begun within 6 months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. The claim shall accrue on the date upon which the claimant first has a reasonable opportunity to discover the violation.

“(3) Any action under this section shall be tried to the court without a jury.

“(4) Notwithstanding any other provision of law, the procedures set forth in section 106(f), 305(g), or 405(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which materials governed by those sections may be reviewed.

“(5) An amount equal to any award against the United States under this section shall be reimbursed by the department or agency concerned to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any part of such appropriation, fund, or account that is available for the enforcement of any Federal law) that is available for the operating expenses of the department or agency concerned.

“(c) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its

departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

“(d) **EXCLUSIVE REMEDY.**—Any action against the United States under this subsection shall be the exclusive remedy against the United States for any claims within the purview of this section.

“(e) **STAY OF PROCEEDINGS.**—(1) Upon the motion of the United States, the court shall stay any action commenced under this section if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related investigation or the prosecution of a related criminal case. Such a stay shall toll the limitations periods of paragraph (2) of subsection (b).

“(2) In this subsection, the terms ‘related criminal case’ and ‘related investigation’ mean an actual prosecution or investigation in progress at the time at which the request for the stay or any subsequent motion to lift the stay is made. In determining whether an investigation or a criminal case is related to an action commenced under this section, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the 2 proceedings, without requiring that any one or more factors be identical.

“(3) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect a related investigation or a related criminal case. If the Government makes such an ex parte submission, the plaintiff shall be given an opportunity to make a submission to the court, not ex parte, and the court may, in its discretion, request further information from either party.”.

(2) The table of sections at the beginning of chapter 121 is amended to read as follows:

“2712. Civil action against the United States.”.

**SEC. 224. [18 U.S.C. 2510 note] SUNSET.**

(a) **IN GENERAL.**—Except as provided in subsection (b), this title and the amendments made by this title (other than sections 203(a), 203(c), 205, 208, 210, 211, 213, 216, 219, 221, and 222, and the amendments made by those sections) shall cease to have effect on December 31, 2005.

(b) **EXCEPTION.**—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in subsection (a) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.

**SEC. 225. IMMUNITY FOR COMPLIANCE WITH FISA WIRETAP.**

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended by inserting after subsection (g) the following:

“(h) No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance in accordance with a court order or request for emergency assistance under this Act.”.

### **TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND ANTI-TERRORIST FINANCING ACT OF 2001**

**SEC. 301. [31 U.S.C. 5301 note] SHORT TITLE.**

This title may be cited as the “International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001”.

**SEC. 302. [31 U.S.C. 5311 note] FINDINGS AND PURPOSES.**

(a) FINDINGS.—The Congress finds that—

(1) money laundering, estimated by the International Monetary Fund to amount to between 2 and 5 percent of global gross domestic product, which is at least \$600,000,000,000 annually, provides the financial fuel that permits transnational criminal enterprises to conduct and expand their operations to the detriment of the safety and security of American citizens;

(2) money laundering, and the defects in financial transparency on which money launderers rely, are critical to the financing of global terrorism and the provision of funds for terrorist attacks;

(3) money launderers subvert legitimate financial mechanisms and banking relationships by using them as protective covering for the movement of criminal proceeds and the financing of crime and terrorism, and, by so doing, can threaten the safety of United States citizens and undermine the integrity of United States financial institutions and of the global financial and trading systems upon which prosperity and growth depend;

(4) certain jurisdictions outside of the United States that offer “offshore” banking and related facilities designed to provide anonymity, coupled with weak financial supervisory and enforcement regimes, provide essential tools to disguise ownership and movement of criminal funds, derived from, or used to commit, offenses ranging from narcotics trafficking, terrorism, arms smuggling, and trafficking in human beings, to financial frauds that prey on law-abiding citizens;

(5) transactions involving such offshore jurisdictions make it difficult for law enforcement officials and regulators to follow the trail of money earned by criminals, organized international criminal enterprises, and global terrorist organizations;

(6) correspondent banking facilities are one of the banking mechanisms susceptible in some circumstances to manipulation by foreign banks to permit the laundering of funds by hid-

ing the identity of real parties in interest to financial transactions;

(7) private banking services can be susceptible to manipulation by money launderers, for example corrupt foreign government officials, particularly if those services include the creation of offshore accounts and facilities for large personal funds transfers to channel funds into accounts around the globe;

(8) United States anti-money laundering efforts are impeded by outmoded and inadequate statutory provisions that make investigations, prosecutions, and forfeitures more difficult, particularly in cases in which money laundering involves foreign persons, foreign banks, or foreign countries;

(9) the ability to mount effective counter-measures to international money launderers requires national, as well as bilateral and multilateral action, using tools specially designed for that effort; and

(10) the Basle Committee on Banking Regulation and Supervisory Practices and the Financial Action Task Force on Money Laundering, of both of which the United States is a member, have each adopted international anti-money laundering principles and recommendations.

(b) PURPOSES.—The purposes of this title are—

(1) to increase the strength of United States measures to prevent, detect, and prosecute international money laundering and the financing of terrorism;

(2) to ensure that—

(A) banking transactions and financial relationships and the conduct of such transactions and relationships, do not contravene the purposes of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act, or chapter 2 of title I of Public Law 91-508 (84 Stat. 1116), or facilitate the evasion of any such provision; and

(B) the purposes of such provisions of law continue to be fulfilled, and such provisions of law are effectively and efficiently administered;

(3) to strengthen the provisions put into place by the Money Laundering Control Act of 1986 (18 U.S.C. 981 note), especially with respect to crimes by non-United States nationals and foreign financial institutions;

(4) to provide a clear national mandate for subjecting to special scrutiny those foreign jurisdictions, financial institutions operating outside of the United States, and classes of international transactions or types of accounts that pose particular, identifiable opportunities for criminal abuse;

(5) to provide the Secretary of the Treasury (in this title referred to as the “Secretary”) with broad discretion, subject to the safeguards provided by the Administrative Procedure Act under title 5, United States Code, to take measures tailored to the particular money laundering problems presented by specific foreign jurisdictions, financial institutions operating outside of the United States, and classes of international transactions or types of accounts;

(6) to ensure that the employment of such measures by the Secretary permits appropriate opportunity for comment by affected financial institutions;

(7) to provide guidance to domestic financial institutions on particular foreign jurisdictions, financial institutions operating outside of the United States, and classes of international transactions that are of primary money laundering concern to the United States Government;

(8) to ensure that the forfeiture of any assets in connection with the anti-terrorist efforts of the United States permits for adequate challenge consistent with providing due process rights;

(9) to clarify the terms of the safe harbor from civil liability for filing suspicious activity reports;

(10) to strengthen the authority of the Secretary to issue and administer geographic targeting orders, and to clarify that violations of such orders or any other requirement imposed under the authority contained in chapter 2 of title I of Public Law 91-508 and subchapters II and III of chapter 53 of title 31, United States Code, may result in criminal and civil penalties;

(11) to ensure that all appropriate elements of the financial services industry are subject to appropriate requirements to report potential money laundering transactions to proper authorities, and that jurisdictional disputes do not hinder examination of compliance by financial institutions with relevant reporting requirements;

(12) to strengthen the ability of financial institutions to maintain the integrity of their employee population; and

(13) to strengthen measures to prevent the use of the United States financial system for personal gain by corrupt foreign officials and to facilitate the repatriation of any stolen assets to the citizens of countries to whom such assets belong.

**SEC. 303. [31 U.S.C. 5311 note] 4-YEAR CONGRESSIONAL REVIEW; EXPEDITED CONSIDERATION.**

(a) **IN GENERAL.**—Effective on and after the first day of fiscal year 2005, the provisions of this title and the amendments made by this title shall terminate if the Congress enacts a joint resolution, the text after the resolving clause of which is as follows: “That provisions of the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, and the amendments made thereby, shall no longer have the force of law.”

(b) **EXPEDITED CONSIDERATION.**—Any joint resolution submitted pursuant to this section should be considered by the Congress expeditiously. In particular, it shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Control Act of 1976.

## Subtitle A—International Counter Money Laundering and Related Measures

### SEC. 311. SPECIAL MEASURES FOR JURISDICTIONS, FINANCIAL INSTITUTIONS, OR INTERNATIONAL TRANSACTIONS OF PRIMARY MONEY LAUNDERING CONCERN.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5318 the following new section:

#### “§ 5318A. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern

“(a) INTERNATIONAL COUNTER-MONEY LAUNDERING REQUIREMENTS.—

“(1) IN GENERAL.—The Secretary of the Treasury may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern, in accordance with subsection (c).

“(2) FORM OF REQUIREMENT.—The special measures described in—

“(A) subsection (b) may be imposed in such sequence or combination as the Secretary shall determine;

“(B) paragraphs (1) through (4) of subsection (b) may be imposed by regulation, order, or otherwise as permitted by law; and

“(C) subsection (b)(5) may be imposed only by regulation.

“(3) DURATION OF ORDERS; RULEMAKING.—Any order by which a special measure described in paragraphs (1) through (4) of subsection (b) is imposed (other than an order described in section 5326)—

“(A) shall be issued together with a notice of proposed rulemaking relating to the imposition of such special measure; and

“(B) may not remain in effect for more than 120 days, except pursuant to a rule promulgated on or before the end of the 120-day period beginning on the date of issuance of such order.

“(4) PROCESS FOR SELECTING SPECIAL MEASURES.—In selecting which special measure or measures to take under this subsection, the Secretary of the Treasury—

“(A) shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union

Administration Board, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and

“(B) shall consider—

“(i) whether similar action has been or is being taken by other nations or multilateral groups;

“(ii) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

“(iii) the extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions; and

“(iv) the effect of the action on United States national security and foreign policy.

“(5) NO LIMITATION ON OTHER AUTHORITY.—This section shall not be construed as superseding or otherwise restricting any other authority granted to the Secretary, or to any other agency, by this subchapter or otherwise.

“(b) SPECIAL MEASURES.—The special measures referred to in subsection (a), with respect to a jurisdiction outside of the United States, financial institution operating outside of the United States, class of transaction within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts are as follows:

“(1) RECORDKEEPING AND REPORTING OF CERTAIN FINANCIAL TRANSACTIONS.—

“(A) IN GENERAL.—The Secretary of the Treasury may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or class of transactions to be of primary money laundering concern.

“(B) FORM OF RECORDS AND REPORTS.—Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including—

“(i) the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

“(ii) the legal capacity in which a participant in any transaction is acting;

“(iii) the identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be rea-

sonable and practicable to obtain and retain the information; and

“(iv) a description of any transaction.

“(2) INFORMATION RELATING TO BENEFICIAL OWNERSHIP.—In addition to any other requirement under any other provision of law, the Secretary may require any domestic financial institution or domestic financial agency to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such a foreign person, that involves a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or transaction or type of account to be of primary money laundering concern.

“(3) INFORMATION RELATING TO CERTAIN PAYABLE-THROUGH ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a payable-through account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a payable through account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

“(A) to identify each customer (and representative of such customer) of such financial institution who is permitted to use, or whose transactions are routed through, such payable-through account; and

“(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

“(4) INFORMATION RELATING TO CERTAIN CORRESPONDENT ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

“(A) to identify each customer (and representative of such customer) of any such financial institution who is permitted to use, or whose transactions are routed through, such correspondent account; and

“(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

“(5) PROHIBITIONS OR CONDITIONS ON OPENING OR MAINTAINING CERTAIN CORRESPONDENT OR PAYABLE-THROUGH ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account or payable-through account.

“(c) CONSULTATIONS AND INFORMATION TO BE CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS, TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRIMARY MONEY LAUNDERING CONCERN.—

“(1) IN GENERAL.—In making a finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern so as to authorize the Secretary of the Treasury to take 1 or more of the special measures described in subsection (b), the Secretary shall consult with the Secretary of State and the Attorney General.

“(2) ADDITIONAL CONSIDERATIONS.—In making a finding described in paragraph (1), the Secretary shall consider in addition such information as the Secretary determines to be relevant, including the following potentially relevant factors:

“(A) JURISDICTIONAL FACTORS.—In the case of a particular jurisdiction—

“(i) evidence that organized criminal groups, international terrorists, or both, have transacted business in that jurisdiction;

“(ii) the extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to non-residents or nondomiciliaries of that jurisdiction;

“(iii) the substance and quality of administration of the bank supervisory and counter-money laundering laws of that jurisdiction;

“(iv) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;

“(v) the extent to which that jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;

“(vi) whether the United States has a mutual legal assistance treaty with that jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and

“(vii) the extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

“(B) INSTITUTIONAL FACTORS.—In the case of a decision to apply 1 or more of the special measures described in subsection (b) only to a financial institution or institutions, or to a transaction or class of transactions, or to a type of account, or to all 3, within or involving a particular jurisdiction—

“(i) the extent to which such financial institutions, transactions, or types of accounts are used to facilitate or promote money laundering in or through the jurisdiction;

“(ii) the extent to which such institutions, transactions, or types of accounts are used for legitimate business purposes in the jurisdiction; and

“(iii) the extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.

“(d) NOTIFICATION OF SPECIAL MEASURES INVOKED BY THE SECRETARY.—Not later than 10 days after the date of any action taken by the Secretary of the Treasury under subsection (a)(1), the Secretary shall notify, in writing, the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of any such action.

“(e) DEFINITIONS.—Notwithstanding any other provision of this subchapter, for purposes of this section and subsections (i) and (j) of section 5318, the following definitions shall apply:

“(1) BANK DEFINITIONS.—The following definitions shall apply with respect to a bank:

“(A) ACCOUNT.—The term ‘account’—

“(i) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

“(ii) includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

“(B) CORRESPONDENT ACCOUNT.—The term ‘correspondent account’ means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.

“(C) PAYABLE-THROUGH ACCOUNT.—The term ‘payable-through account’ means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

“(2) DEFINITIONS APPLICABLE TO INSTITUTIONS OTHER THAN BANKS.—With respect to any financial institution other than a bank, the Secretary shall, after consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act), define by regulation the term ‘account’, and shall include within the meaning of that term, to the extent, if any, that the Secretary deems appropriate, arrangements similar to payable-through and correspondent accounts.

“(3) REGULATORY DEFINITION OF BENEFICIAL OWNERSHIP.—The Secretary shall promulgate regulations defining beneficial ownership of an account for purposes of this section and subsections (i) and (j) of section 5318. Such regulations shall address issues related to an individual’s authority to fund, direct, or manage the account (including, without limitation, the power to direct payments into or out of the account), and an individual’s material interest in the income or corpus of the account, and shall ensure that the identification of individuals under this section does not extend to any individual whose beneficial interest in the income or corpus of the account is immaterial.

“(4) OTHER TERMS.—The Secretary may, by regulation, further define the terms in paragraphs (1), (2), and (3), and define other terms for the purposes of this section, as the Secretary deems appropriate.”.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5318 the following new item:

“5318A. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.”.

**SEC. 312. SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS.**

(a) IN GENERAL.—Section 5318 of title 31, United States Code, is amended by adding at the end the following:

“(i) DUE DILIGENCE FOR UNITED STATES PRIVATE BANKING AND CORRESPONDENT BANK ACCOUNTS INVOLVING FOREIGN PERSONS.—

“(1) IN GENERAL.—Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.

“(2) ADDITIONAL STANDARDS FOR CERTAIN CORRESPONDENT ACCOUNTS.—

“(A) IN GENERAL.—Subparagraph (B) shall apply if a correspondent account is requested or maintained by, or on behalf of, a foreign bank operating—

“(i) under an offshore banking license; or

“(ii) under a banking license issued by a foreign country that has been designated—

“(I) as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; or

“(II) by the Secretary of the Treasury as warranting special measures due to money laundering concerns.

“(B) POLICIES, PROCEDURES, AND CONTROLS.—The enhanced due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution in the United States takes reasonable steps—

“(i) to ascertain for any such foreign bank, the shares of which are not publicly traded, the identity of each of the owners of the foreign bank, and the nature and extent of the ownership interest of each such owner;

“(ii) to conduct enhanced scrutiny of such account to guard against money laundering and report any suspicious transactions under subsection (g); and

“(iii) to ascertain whether such foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information, as appropriate under paragraph (1).

“(3) MINIMUM STANDARDS FOR PRIVATE BANKING ACCOUNTS.—If a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps—

“(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under subsection (g); and

“(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

“(4) DEFINITION.—For purposes of this subsection, the following definitions shall apply:

“(A) OFFSHORE BANKING LICENSE.—The term ‘offshore banking license’ means a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the country which issued the license.

“(B) PRIVATE BANKING ACCOUNT.—The term ‘private banking account’ means an account (or any combination of accounts) that—

“(i) requires a minimum aggregate deposits of funds or other assets of not less than \$1,000,000;

“(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

“(iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account.”.

(b) [31 U.S.C. 5318 note] REGULATORY AUTHORITY AND EFFECTIVE DATE.—

(1) REGULATORY AUTHORITY.—Not later than 180 days after the date of enactment of this Act, the Secretary, in consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act) of the affected financial institutions, shall further delineate, by regulation, the due diligence policies, procedures, and controls required under section 5318(i)(1) of title 31, United States Code, as added by this section.

(2) EFFECTIVE DATE.—Section 5318(i) of title 31, United States Code, as added by this section, shall take effect 270 days after the date of enactment of this Act, whether or not final regulations are issued under paragraph (1), and the failure to issue such regulations shall in no way affect the enforceability of this section or the amendments made by this section. Section 5318(i) of title 31, United States Code, as added by this section, shall apply with respect to accounts covered by that section 5318(i), that are opened before, on, or after the date of enactment of this Act.

**SEC. 313. PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.**

(a) IN GENERAL.—Section 5318 of title 31, United States Code, as amended by this title, is amended by adding at the end the following:

“(j) PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.—

“(1) IN GENERAL.—A financial institution described in subparagraphs (A) through (G) of section 5312(a)(2) (in this subsection referred to as a ‘covered financial institution’) shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country.

“(2) PREVENTION OF INDIRECT SERVICE TO FOREIGN SHELL BANKS.—A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to another foreign bank that does not have a physical presence in any country. The Secretary of the Treasury shall, by regulation, delineate the reasonable steps necessary to comply with this paragraph.

“(3) EXCEPTION.—Paragraphs (1) and (2) do not prohibit a covered financial institution from providing a correspondent account to a foreign bank, if the foreign bank—

“(A) is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

“(B) is subject to supervision by a banking authority in the country regulating the affiliated depository institution, credit union, or foreign bank described in subparagraph (A), as applicable.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘affiliate’ means a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank; and

“(B) the term ‘physical presence’ means a place of business that—

“(i) is maintained by a foreign bank;

“(ii) is located at a fixed address (other than solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank—

“(I) employs 1 or more individuals on a full-time basis; and

“(II) maintains operating records related to its banking activities; and

“(iii) is subject to inspection by the banking authority which licensed the foreign bank to conduct banking activities.”.

(b) [31 U.S.C. 5318 note] EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the end of the 60-day period beginning on the date of enactment of this Act.

**SEC. 314. [31 U.S.C. 5311 note] COOPERATIVE EFFORTS TO DETER MONEY LAUNDERING.**

(a) COOPERATION AMONG FINANCIAL INSTITUTIONS, REGULATORY AUTHORITIES, AND LAW ENFORCEMENT AUTHORITIES.—

(1) REGULATIONS.—The Secretary shall, within 120 days after the date of enactment of this Act, adopt regulations to encourage further cooperation among financial institutions, their

regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.

(2) COOPERATION AND INFORMATION SHARING PROCEDURES.—The regulations adopted under paragraph (1) may include or create procedures for cooperation and information sharing focusing on—

(A) matters specifically related to the finances of terrorist groups, the means by which terrorist groups transfer funds around the world and within the United States, including through the use of charitable organizations, nonprofit organizations, and nongovernmental organizations, and the extent to which financial institutions in the United States are unwittingly involved in such finances and the extent to which such institutions are at risk as a result;

(B) the relationship, particularly the financial relationship, between international narcotics traffickers and foreign terrorist organizations, the extent to which their memberships overlap and engage in joint activities, and the extent to which they cooperate with each other in raising and transferring funds for their respective purposes; and

(C) means of facilitating the identification of accounts and transactions involving terrorist groups and facilitating the exchange of information concerning such accounts and transactions between financial institutions and law enforcement organizations.

(3) CONTENTS.—The regulations adopted pursuant to paragraph (1) may—

(A) require that each financial institution designate 1 or more persons to receive information concerning, and to monitor accounts of individuals, entities, and organizations identified, pursuant to paragraph (1); and

(B) further establish procedures for the protection of the shared information, consistent with the capacity, size, and nature of the institution to which the particular procedures apply.

(4) RULE OF CONSTRUCTION.—The receipt of information by a financial institution pursuant to this section shall not relieve or otherwise modify the obligations of the financial institution with respect to any other person or account.

(5) USE OF INFORMATION.—Information received by a financial institution pursuant to this section shall not be used for any purpose other than identifying and reporting on activities that may involve terrorist acts or money laundering activities.

(b) COOPERATION AMONG FINANCIAL INSTITUTIONS.—Upon notice provided to the Secretary, 2 or more financial institutions and any association of financial institutions may share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money laundering activi-

ties. A financial institution or association that transmits, receives, or shares such information for the purposes of identifying and reporting activities that may involve terrorist acts or money laundering activities shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure, or any other person identified in the disclosure, except where such transmission, receipt, or sharing violates this section or regulations promulgated pursuant to this section.

(c) **RULE OF CONSTRUCTION.**—Compliance with the provisions of this title requiring or allowing financial institutions and any association of financial institutions to disclose or share information regarding individuals, entities, and organizations engaged in or suspected of engaging in terrorist acts or money laundering activities shall not constitute a violation of the provisions of title V of the Gramm-Leach-Bliley Act (Public Law 106–102).

(d) **REPORTS TO THE FINANCIAL SERVICES INDUSTRY ON SUSPICIOUS FINANCIAL ACTIVITIES.**—At least semiannually, the Secretary shall—

(1) publish a report containing a detailed analysis identifying patterns of suspicious activity and other investigative insights derived from suspicious activity reports and investigations conducted by Federal, State, and local law enforcement agencies to the extent appropriate; and

(2) distribute such report to financial institutions (as defined in section 5312 of title 31, United States Code).

**SEC. 315. INCLUSION OF FOREIGN CORRUPTION OFFENSES AS MONEY LAUNDERING CRIMES.**

Section 1956(c)(7) of title 18, United States Code, is amended—

(1) in subparagraph (B)—

(A) in clause (ii), by striking “or destruction of property by means of explosive or fire” and inserting “destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16)”;

(B) in clause (iii), by striking “1978” and inserting “1978”;

(C) by adding at the end the following:

“(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

“(v) smuggling or export control violations involving—

“(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

“(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730–774); or

“(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the

case for prosecution, if the offender were found within the territory of the United States;” and

(2) in subparagraph (D)—

(A) by inserting “section 541 (relating to goods falsely classified),” before “section 542”;

(B) by inserting “section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking),” before “section 956”;

(C) by inserting “section 1030 (relating to computer fraud and abuse),” before “1032”; and

(D) by inserting “any felony violation of the Foreign Agents Registration Act of 1938,” before “or any felony violation of the Foreign Corrupt Practices Act”.

**SEC. 316. ANTI-TERRORIST FORFEITURE PROTECTION.**

(a) [18 U.S.C. 983 note] **RIGHT TO CONTEST.**—An owner of property that is confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists, may contest that confiscation by filing a claim in the manner set forth in the Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims), and asserting as an affirmative defense that—

(1) the property is not subject to confiscation under such provision of law; or

(2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

(b) [18 U.S.C. 983 note] **EVIDENCE.**—In considering a claim filed under this section, a court may admit evidence that is otherwise inadmissible under the Federal Rules of Evidence, if the court determines that the evidence is reliable, and that compliance with the Federal Rules of Evidence may jeopardize the national security interests of the United States.

(c) [18 U.S.C. 983 note] **CLARIFICATIONS.**—

(1) **PROTECTION OF RIGHTS.**—The exclusion of certain provisions of Federal law from the definition of the term “civil forfeiture statute” in section 983(i) of title 18, United States Code, shall not be construed to deny an owner of property the right to contest the confiscation of assets of suspected international terrorists under—

(A) subsection (a) of this section;

(B) the Constitution; or

(C) subchapter II of chapter 5 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(2) **SAVINGS CLAUSE.**—Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 983 of title 18, United States Code, or any other provision of law.

(d) **TECHNICAL CORRECTION.**—Section 983(i)(2)(D) of title 18, United States Code, is amended by inserting “or the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.)” before the semicolon.

**SEC. 317. LONG-ARM JURISDICTION OVER FOREIGN MONEY LAUNDERERS.**

Section 1956(b) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving the margins 2 ems to the right;

(2) by inserting after “(b)” the following: “PENALTIES.—

“(1) IN GENERAL.—”;

(3) by inserting “, or section 1957” after “or (a)(3)”; and

(4) by adding at the end the following:

“(2) JURISDICTION OVER FOREIGN PERSONS.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

“(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

“(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

“(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

“(3) COURT AUTHORITY OVER ASSETS.—A court described in paragraph (2) may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

“(4) FEDERAL RECEIVER.—

“(A) IN GENERAL.—A court described in paragraph (2) may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

“(B) APPOINTMENT AND AUTHORITY.—A Federal Receiver described in subparagraph (A)—

“(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

“(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

“(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

“(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

“(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.”.

**SEC. 318. LAUNDERING MONEY THROUGH A FOREIGN BANK.**

Section 1956(c) of title 18, United States Code, is amended by striking paragraph (6) and inserting the following:

“(6) the term ‘financial institution’ includes—

“(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

“(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).”.

**SEC. 319. FORFEITURE OF FUNDS IN UNITED STATES INTERBANK ACCOUNTS.**

(a) FORFEITURE FROM UNITED STATES INTERBANK ACCOUNT.—Section 981 of title 18, United States Code, is amended by adding at the end the following:

“(k) INTERBANK ACCOUNTS.—

“(1) IN GENERAL.—

“(A) IN GENERAL.—For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign bank, and that foreign bank has an interbank account in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign bank, may be restrained, seized, or arrested.

“(B) AUTHORITY TO SUSPEND.—The Attorney General, in consultation with the Secretary of the Treasury, may suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign bank is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

“(2) NO REQUIREMENT FOR GOVERNMENT TO TRACE FUNDS.—If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign bank, nor shall it be necessary for the Government to rely on the application of section 984.

“(3) CLAIMS BROUGHT BY OWNER OF THE FUNDS.—If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign bank may contest the forfeiture by filing a claim under section 983.

“(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

“(A) INTERBANK ACCOUNT.—The term ‘interbank account’ has the same meaning as in section 984(c)(2)(B).

“(B) OWNER.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘owner’—

“(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign bank at the time such funds were deposited; and

“(II) does not include either the foreign bank or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

“(ii) EXCEPTION.—The foreign bank may be considered the ‘owner’ of the funds (and no other person shall qualify as the owner of such funds) only if—

“(I) the basis for the forfeiture action is wrongdoing committed by the foreign bank; or

“(II) the foreign bank establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign bank had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign bank shall be deemed the owner of the funds to the extent of such discharged obligation.”.

(b) BANK RECORDS.—Section 5318 of title 31, United States Code, as amended by this title, is amended by adding at the end the following:

“(k) BANK RECORDS RELATED TO ANTI-MONEY LAUNDERING PROGRAMS.—

“(1) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

“(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

“(B) INCORPORATED TERM.—The term ‘correspondent account’ has the same meaning as in section 5318A(f)(1)(B).

“(2) 120-HOUR RULE.—Not later than 120 hours after receiving a request by an appropriate Federal banking agency for information related to anti-money laundering compliance by a covered financial institution or a customer of such institution, a covered financial institution shall provide to the appropriate Federal banking agency, or make available at a location specified by the representative of the appropriate Federal banking agency, information and account documentation for any ac-

count opened, maintained, administered or managed in the United States by the covered financial institution.

“(3) FOREIGN BANK RECORDS.—

“(A) SUMMONS OR SUBPOENA OF RECORDS.—

“(i) IN GENERAL.—The Secretary of the Treasury or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank.

“(ii) SERVICE OF SUMMONS OR SUBPOENA.—A summons or subpoena referred to in clause (i) may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

“(B) ACCEPTANCE OF SERVICE.—

“(i) MAINTAINING RECORDS IN THE UNITED STATES.—Any covered financial institution which maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of such foreign bank and the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

“(ii) LAW ENFORCEMENT REQUEST.—Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

“(C) TERMINATION OF CORRESPONDENT RELATIONSHIP.—

“(i) TERMINATION UPON RECEIPT OF NOTICE.—A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed—

“(I) to comply with a summons or subpoena issued under subparagraph (A); or

“(II) to initiate proceedings in a United States court contesting such summons or subpoena.

“(ii) LIMITATION ON LIABILITY.—A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this subsection.

“(iii) FAILURE TO TERMINATE RELATIONSHIP.—Failure to terminate a correspondent relationship in ac-

cordance with this subsection shall render the covered financial institution liable for a civil penalty of up to \$10,000 per day until the correspondent relationship is so terminated.”.

(c) [31 U.S.C. 5318 note] GRACE PERIOD.—Financial institutions shall have 60 days from the date of enactment of this Act to comply with the provisions of section 5318(k) of title 31, United States Code, as added by this section.

(d) AUTHORITY TO ORDER CONVICTED CRIMINAL TO RETURN PROPERTY LOCATED ABROAD.—

(1) FORFEITURE OF SUBSTITUTE PROPERTY.—Section 413(p) of the Controlled Substances Act (21 U.S.C. 853) is amended to read as follows:

“(p) FORFEITURE OF SUBSTITUTE PROPERTY.—

“(1) IN GENERAL.—Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

“(A) cannot be located upon the exercise of due diligence;

“(B) has been transferred or sold to, or deposited with, a third party;

“(C) has been placed beyond the jurisdiction of the court;

“(D) has been substantially diminished in value; or

“(E) has been commingled with other property which cannot be divided without difficulty.

“(2) SUBSTITUTE PROPERTY.—In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

“(3) RETURN OF PROPERTY TO JURISDICTION.—In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.”.

(2) PROTECTIVE ORDERS.—Section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e)) is amended by adding at the end the following:

“(4) ORDER TO REPATRIATE AND DEPOSIT.—

“(A) IN GENERAL.—Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

“(B) FAILURE TO COMPLY.—Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.”.

**SEC. 320. PROCEEDS OF FOREIGN CRIMES.**

Section 981(a)(1)(B) of title 18, United States Code, is amended to read as follows:

“(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense—

“(i) involves the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

“(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

“(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense had occurred within the jurisdiction of the United States.”.

**SEC. 321. FINANCIAL INSTITUTIONS SPECIFIED IN SUBCHAPTER II OF CHAPTER 53 OF TITLE 31, UNITED STATES CODE.**

(a) CREDIT UNIONS.—Subparagraph (E) of section 5312(2) of title 31, United States Code, is amended to read as follows:

“(E) any credit union;”.

(b) FUTURES COMMISSION MERCHANT; COMMODITY TRADING ADVISOR; COMMODITY POOL OPERATOR.—Section 5312 of title 31, United States Code, is amended by adding at the end the following new subsection:

“(c) ADDITIONAL DEFINITIONS.—For purposes of this subchapter, the following definitions shall apply:

“(1) CERTAIN INSTITUTIONS INCLUDED IN DEFINITION.—The term ‘financial institution’ (as defined in subsection (a)) includes the following:

“(A) Any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act.”.

(c) CFTC INCLUDED.—For purposes of this Act and any amendment made by this Act to any other provision of law, the term “Federal functional regulator” includes the Commodity Futures Trading Commission.

**SEC. 322. CORPORATION REPRESENTED BY A FUGITIVE.**

Section 2466 of title 18, United States Code, is amended by designating the present matter as subsection (a), and adding at the end the following:

“(b) Subsection (a) may be applied to a claim filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation is a person to whom subsection (a) applies.”.

**SEC. 323. ENFORCEMENT OF FOREIGN JUDGMENTS.**

Section 2467 of title 28, United States Code, is amended—

(1) in subsection (d), by adding the following after paragraph (2):

“(3) PRESERVATION OF PROPERTY.—

“(A) IN GENERAL.—To preserve the availability of property subject to a foreign forfeiture or confiscation judgment, the Government may apply for, and the court may issue, a restraining order pursuant to section 983(j) of title 18, at any time before or after an application is filed pursuant to subsection (c)(1) of this section.

“(B) EVIDENCE.—The court, in issuing a restraining order under subparagraph (A)—

“(i) may rely on information set forth in an affidavit describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding; or

“(ii) may register and enforce a restraining order that has been issued by a court of competent jurisdiction in the foreign country and certified by the Attorney General pursuant to subsection (b)(2).

“(C) LIMIT ON GROUNDS FOR OBJECTION.—No person may object to a restraining order under subparagraph (A) on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court.”;

(2) in subsection (b)(1)(C), by striking “establishing that the defendant received notice of the proceedings in sufficient time to enable the defendant” and inserting “establishing that the foreign nation took steps, in accordance with the principles of due process, to give notice of the proceedings to all persons with an interest in the property in sufficient time to enable such persons”;

(3) in subsection (d)(1)(D), by striking “the defendant in the proceedings in the foreign court did not receive notice” and inserting “the foreign nation did not take steps, in accordance with the principles of due process, to give notice of the proceedings to a person with an interest in the property”; and

(4) in subsection (a)(2)(A), by inserting “, any violation of foreign law that would constitute a violation or an offense for which property could be forfeited under Federal law if the offense were committed in the United States” after “United Nations Convention”.

**SEC. 324. [31 U.S.C. 5311 note] REPORT AND RECOMMENDATION.**

Not later than 30 months after the date of enactment of this Act, the Secretary, in consultation with the Attorney General, the Federal banking agencies (as defined at section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration Board, the Securities and Exchange Commission, and such other agencies as the Secretary may determine, at the discretion of the Secretary, shall evaluate the operations of the provisions of this subtitle and make recommendations to Congress as to any legislative action with respect to this subtitle as the Secretary may determine to be necessary or advisable.

**SEC. 325. CONCENTRATION ACCOUNTS AT FINANCIAL INSTITUTIONS.**

Section 5318(h) of title 31, United States Code, as amended by section 202 of this title, is amended by adding at the end the following:

“(3) CONCENTRATION ACCOUNTS.—The Secretary may prescribe regulations under this subsection that govern maintenance of concentration accounts by financial institutions, in order to ensure that such accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

“(A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;

“(B) prohibit financial institutions and their employees from informing customers of the existence of, or the means of identifying, the concentration accounts of the institution; and

“(C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.”.

**SEC. 326. VERIFICATION OF IDENTIFICATION.**

(a) IN GENERAL.—Section 5318 of title 31, United States Code, as amended by this title, is amended by adding at the end the following:

“(1) IDENTIFICATION AND VERIFICATION OF ACCOUNTHOLDERS.—

“(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.

“(2) MINIMUM REQUIREMENTS.—The regulations shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for—

“(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

“(B) maintaining records of the information used to verify a person’s identity, including name, address, and other identifying information; and

“(C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

“(3) FACTORS TO BE CONSIDERED.—In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening

accounts, and the various types of identifying information available.

“(4) CERTAIN FINANCIAL INSTITUTIONS.—In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of the Commodity Futures Trading Commission), the regulations prescribed by the Secretary under paragraph (1) shall be prescribed jointly with each Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act, including the Commodity Futures Trading Commission) appropriate for such financial institution.

“(5) EXEMPTIONS.—The Secretary (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

“(6) EFFECTIVE DATE.—Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of enactment of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001.”

(b) STUDY AND REPORT REQUIRED.—Within 6 months after the date of enactment of this Act, the Secretary, in consultation with the Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act) and other appropriate Government agencies, shall submit a report to the Congress containing recommendations for—

(1) determining the most timely and effective way to require foreign nationals to provide domestic financial institutions and agencies with appropriate and accurate information, comparable to that which is required of United States nationals, concerning the identity, address, and other related information about such foreign nationals necessary to enable such institutions and agencies to comply with the requirements of this section;

(2) requiring foreign nationals to apply for and obtain, before opening an account with a domestic financial institution, an identification number which would function similarly to a Social Security number or tax identification number; and

(3) establishing a system for domestic financial institutions and agencies to review information maintained by relevant Government agencies for purposes of verifying the identities of foreign nationals seeking to open accounts at those institutions and agencies.

**SEC. 327. CONSIDERATION OF ANTI-MONEY LAUNDERING RECORD.**

(a) BANK HOLDING COMPANY ACT OF 1956.—

(1) IN GENERAL.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

“(6) MONEY LAUNDERING.—In every case, the Board shall take into consideration the effectiveness of the company or

companies in combatting money laundering activities, including in overseas branches.”.

(2) [12 U.S.C. 1842 note] SCOPE OF APPLICATION.—The amendment made by paragraph (1) shall apply with respect to any application submitted to the Board of Governors of the Federal Reserve System under section 3 of the Bank Holding Company Act of 1956 after December 31, 2001, which has not been approved by the Board before the date of enactment of this Act.

(b) MERGERS SUBJECT TO REVIEW UNDER FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended—

(A) by redesignating paragraph (11) as paragraph (12);

and

(B) by inserting after paragraph (10), the following new paragraph:

“(11) MONEY LAUNDERING.—In every case, the responsible agency, shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches.”.

(2) [12 U.S.C. 1828 note] SCOPE OF APPLICATION.—The amendment made by paragraph (1) shall apply with respect to any application submitted to the responsible agency under section 18(c) of the Federal Deposit Insurance Act after December 31, 2001, which has not been approved by all appropriate responsible agencies before the date of enactment of this Act.

**SEC. 328. [31 U.S.C. 5311 note] INTERNATIONAL COOPERATION ON IDENTIFICATION OF ORIGINATORS OF WIRE TRANSFERS.**

The Secretary shall—

(1) in consultation with the Attorney General and the Secretary of State, take all reasonable steps to encourage foreign governments to require the inclusion of the name of the originator in wire transfer instructions sent to the United States and other countries, with the information to remain with the transfer from its origination until the point of disbursement; and

(2) report annually to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on—

(A) progress toward the goal enumerated in paragraph (1), as well as impediments to implementation and an estimated compliance rate; and

(B) impediments to instituting a regime in which all appropriate identification, as defined by the Secretary, about wire transfer recipients shall be included with wire transfers from their point of origination until disbursement.

**SEC. 329. CRIMINAL PENALTIES.**

Any person who is an official or employee of any department, agency, bureau, office, commission, or other entity of the Federal Government, and any other person who is acting for or on behalf of any such entity, who, directly or indirectly, in connection with the administration of this title, corruptly demands, seeks, receives,

accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for—

- (1) being influenced in the performance of any official act;
- (2) being influenced to commit or aid in the committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
- (3) being induced to do or omit to do any act in violation of the official duty of such official or person,

shall be fined in an amount not more than 3 times the monetary equivalent of the thing of value, or imprisoned for not more than 15 years, or both. A violation of this section shall be subject to chapter 227 of title 18, United States Code, and the provisions of the United States Sentencing Guidelines.

**SEC. 330. INTERNATIONAL COOPERATION IN INVESTIGATIONS OF MONEY LAUNDERING, FINANCIAL CRIMES, AND THE FINANCES OF TERRORIST GROUPS.**

(a) **NEGOTIATIONS.**—It is the sense of the Congress that the President should direct the Secretary of State, the Attorney General, or the Secretary of the Treasury, as appropriate, and in consultation with the Board of Governors of the Federal Reserve System, to seek to enter into negotiations with the appropriate financial supervisory agencies and other officials of any foreign country the financial institutions of which do business with United States financial institutions or which may be utilized by any foreign terrorist organization (as designated under section 219 of the Immigration and Nationality Act), any person who is a member or representative of any such organization, or any person engaged in money laundering or financial or other crimes.

(b) **PURPOSES OF NEGOTIATIONS.**—It is the sense of the Congress that, in carrying out any negotiations described in paragraph (1), the President should direct the Secretary of State, the Attorney General, or the Secretary of the Treasury, as appropriate, to seek to enter into and further cooperative efforts, voluntary information exchanges, the use of letters rogatory, mutual legal assistance treaties, and international agreements to—

- (1) ensure that foreign banks and other financial institutions maintain adequate records of transaction and account information relating to any foreign terrorist organization (as designated under section 219 of the Immigration and Nationality Act), any person who is a member or representative of any such organization, or any person engaged in money laundering or financial or other crimes; and

- (2) establish a mechanism whereby such records may be made available to United States law enforcement officials and domestic financial institution supervisors, when appropriate.

## **Subtitle B—Bank Secrecy Act Amendments and Related Improvements**

**SEC. 351. AMENDMENTS RELATING TO REPORTING OF SUSPICIOUS ACTIVITIES.**

(a) **AMENDMENT RELATING TO CIVIL LIABILITY IMMUNITY FOR DISCLOSURES.**—Section 5318(g)(3) of title 31, United States Code, is amended to read as follows:

“(3) LIABILITY FOR DISCLOSURES.—

“(A) IN GENERAL.—Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

“(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

“(i) any inference that the term ‘person’, as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

“(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.”.

(b) PROHIBITION ON NOTIFICATION OF DISCLOSURES.—Section 5318(g)(2) of title 31, United States Code, is amended to read as follows:

“(2) NOTIFICATION PROHIBITED.—

“(A) IN GENERAL.—If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—

“(i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and

“(ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

“(B) DISCLOSURES IN CERTAIN EMPLOYMENT REFERENCES.—

“(i) RULE OF CONSTRUCTION.—Notwithstanding the application of subparagraph (A) in any other context, subparagraph (A) shall not be construed as prohibiting any financial institution, or any director, officer, employee, or agent of such institution, from including information that was included in a report to which subparagraph (A) applies—

“(I) in a written employment reference that is provided in accordance with section 18(w) of the Federal Deposit Insurance Act in response to a request from another financial institution; or

“(II) in a written termination notice or employment reference that is provided in accordance with the rules of a self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission,

except that such written reference or notice may not disclose that such information was also included in any such report, or that such report was made.

“(ii) INFORMATION NOT REQUIRED.—Clause (i) shall not be construed, by itself, to create any affirmative duty to include any information described in clause (i) in any employment reference or termination notice referred to in clause (i).”.

**SEC. 352. ANTI-MONEY LAUNDERING PROGRAMS.**

(a) IN GENERAL.—Section 5318(h) of title 31, United States Code, is amended to read as follows:

“(h) ANTI-MONEY LAUNDERING PROGRAMS.—

“(1) IN GENERAL.—In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—

“(A) the development of internal policies, procedures, and controls;

“(B) the designation of a compliance officer;

“(C) an ongoing employee training program; and

“(D) an independent audit function to test programs.

“(2) REGULATIONS.—The Secretary of the Treasury, after consultation with the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act), may prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the rules contained in part 103 of title 31, of the Code of Federal Regulations, or any successor rule thereto, for so long as such financial institution is not subject to the provisions of such rules.”.

(b) **[31 U.S.C. 5318 note] EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect at the end of the 180-day period beginning on the date of enactment of this Act.

(c) **[31 U.S.C. 5318 note] DATE OF APPLICATION OF REGULATIONS; FACTORS TO BE TAKEN INTO ACCOUNT.**—Before the end of the 180-day period beginning on the date of enactment of this Act, the Secretary shall prescribe regulations that consider the extent to which the requirements imposed under this section are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.

**SEC. 353. PENALTIES FOR VIOLATIONS OF GEOGRAPHIC TARGETING ORDERS AND CERTAIN RECORDKEEPING REQUIREMENTS, AND LENGTHENING EFFECTIVE PERIOD OF GEOGRAPHIC TARGETING ORDERS.**

(a) CIVIL PENALTY FOR VIOLATION OF TARGETING ORDER.—Section 5321(a)(1) of title 31, United States Code, is amended—

(1) by inserting “or order issued” after “subchapter or a regulation prescribed”; and

(2) by inserting “, or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,” after “sections 5314 and 5315”.

(b) CRIMINAL PENALTIES FOR VIOLATION OF TARGETING ORDER.—Section 5322 of title 31, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “or order issued” after “willfully violating this subchapter or a regulation prescribed”; and

(B) by inserting “, or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,” after “under section 5315 or 5324”; and

(2) in subsection (b)—

(A) by inserting “or order issued” after “willfully violating this subchapter or a regulation prescribed”; and

(B) by inserting “or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,” after “under section 5315 or 5324,”.

(c) STRUCTURING TRANSACTIONS TO EVADE TARGETING ORDER OR CERTAIN RECORDKEEPING REQUIREMENTS.—Section 5324(a) of title 31, United States Code, is amended—

(1) by inserting a comma after “shall”;

(2) by striking “section—” and inserting “section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508—”;

(3) in paragraph (1), by inserting “, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508” after “regulation prescribed under any such section”; and

(4) in paragraph (2), by inserting “, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,” after “regulation prescribed under any such section”.

(d) LENGTHENING EFFECTIVE PERIOD OF GEOGRAPHIC TARGETING ORDERS.—Section 5326(d) of title 31, United States Code,

is amended by striking “more than 60” and inserting “more than 180”.

**SEC. 354. ANTI-MONEY LAUNDERING STRATEGY.**

Section 5341(b) of title 31, United States Code, is amended by adding at the end the following:

“(12) DATA REGARDING FUNDING OF TERRORISM.—Data concerning money laundering efforts related to the funding of acts of international terrorism, and efforts directed at the prevention, detection, and prosecution of such funding.”.

**SEC. 355. AUTHORIZATION TO INCLUDE SUSPICIONS OF ILLEGAL ACTIVITY IN WRITTEN EMPLOYMENT REFERENCES.**

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

“(w) WRITTEN EMPLOYMENT REFERENCES MAY CONTAIN SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.—

“(1) AUTHORITY TO DISCLOSE INFORMATION.—Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

“(2) INFORMATION NOT REQUIRED.—Nothing in paragraph (1) shall be construed, by itself, to create any affirmative duty to include any information described in paragraph (1) in any employment reference referred to in paragraph (1).

“(3) MALICIOUS INTENT.—Notwithstanding any other provision of this subsection, voluntary disclosure made by an insured depository institution, and any director, officer, employee, or agent of such institution under this subsection concerning potentially unlawful activity that is made with malicious intent, shall not be shielded from liability from the person identified in the disclosure.

“(4) DEFINITION.—For purposes of this subsection, the term ‘insured depository institution’ includes any uninsured branch or agency of a foreign bank.”.

**SEC. 356. REPORTING OF SUSPICIOUS ACTIVITIES BY SECURITIES BROKERS AND DEALERS; INVESTMENT COMPANY STUDY.**

(a) [31 U.S.C. 5318 note] DEADLINE FOR SUSPICIOUS ACTIVITY REPORTING REQUIREMENTS FOR REGISTERED BROKERS AND DEALERS.—The Secretary, after consultation with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System, shall publish proposed regulations in the Federal Register before January 1, 2002, requiring brokers and dealers registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 to submit suspicious activity reports under section 5318(g) of title 31, United States Code. Such regulations shall be published in final form not later than July 1, 2002.

(b) [31 U.S.C. 5318 note] SUSPICIOUS ACTIVITY REPORTING REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS, COMMODITY TRADING ADVISORS, AND COMMODITY POOL OPERATORS.—The Sec-

retary, in consultation with the Commodity Futures Trading Commission, may prescribe regulations requiring futures commission merchants, commodity trading advisors, and commodity pool operators registered under the Commodity Exchange Act to submit suspicious activity reports under section 5318(g) of title 31, United States Code.

(c) **[31 U.S.C. 5311 note] REPORT ON INVESTMENT COMPANIES.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission shall jointly submit a report to the Congress on recommendations for effective regulations to apply the requirements of subchapter II of chapter 53 of title 31, United States Code, to investment companies pursuant to section 5312(a)(2)(I) of title 31, United States Code.

(2) **DEFINITION.**—For purposes of this subsection, the term “investment company”—

(A) has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3); and

(B) includes any person that, but for the exceptions provided for in paragraph (1) or (7) of section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)), would be an investment company.

(3) **ADDITIONAL RECOMMENDATIONS.**—The report required by paragraph (1) may make different recommendations for different types of entities covered by this subsection.

(4) **BENEFICIAL OWNERSHIP OF PERSONAL HOLDING COMPANIES.**—The report described in paragraph (1) shall also include recommendations as to whether the Secretary should promulgate regulations to treat any corporation or business or other grantor trust whose assets are predominantly securities, bank certificates of deposit, or other securities or investment instruments (other than such as relate to operating subsidiaries of such corporation or trust) and that has 5 or fewer common shareholders or holders of beneficial or other equity interest, as a financial institution within the meaning of that phrase in section 5312(a)(2)(I) and whether to require such corporations or trusts to disclose their beneficial owners when opening accounts or initiating funds transfers at any domestic financial institution.

**SEC. 357. SPECIAL REPORT ON ADMINISTRATION OF BANK SECRECY PROVISIONS.**

(a) **REPORT REQUIRED.**—Not later than 6 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress relating to the role of the Internal Revenue Service in the administration of subchapter II of chapter 53 of title 31, United States Code (commonly known as the “Bank Secrecy Act”).

(b) **CONTENTS.**—The report required by subsection (a)—

(1) shall specifically address, and contain recommendations concerning—

(A) whether it is advisable to shift the processing of information reporting to the Department of the Treasury under the Bank Secrecy Act provisions to facilities other than those managed by the Internal Revenue Service; and

(B) whether it remains reasonable and efficient, in light of the objective of both anti-money-laundering programs and Federal tax administration, for the Internal Revenue Service to retain authority and responsibility for audit and examination of the compliance of money services businesses and gaming institutions with those Bank Secrecy Act provisions; and

(2) shall, if the Secretary determines that the information processing responsibility or the audit and examination responsibility of the Internal Revenue Service, or both, with respect to those Bank Secrecy Act provisions should be transferred to other agencies, include the specific recommendations of the Secretary regarding the agency or agencies to which any such function should be transferred, complete with a budgetary and resources plan for expeditiously accomplishing the transfer.

**SEC. 358. BANK SECRECY PROVISIONS AND ACTIVITIES OF UNITED STATES INTELLIGENCE AGENCIES TO FIGHT INTERNATIONAL TERRORISM.**

(a) AMENDMENT RELATING TO THE PURPOSES OF CHAPTER 53 OF TITLE 31, UNITED STATES CODE.—Section 5311 of title 31, United States Code, is amended by inserting before the period at the end the following: “, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism”.

(b) AMENDMENT RELATING TO REPORTING OF SUSPICIOUS ACTIVITIES.—Section 5318(g)(4)(B) of title 31, United States Code, is amended by striking “or supervisory agency” and inserting “, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism”.

(c) AMENDMENT RELATING TO AVAILABILITY OF REPORTS.—Section 5319 of title 31, United States Code, is amended to read as follows:

**“§ 5319. Availability of reports**

“The Secretary of the Treasury shall make information in a report filed under this subchapter available to an agency, including any State financial institutions supervisory agency, United States intelligence agency or self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission, upon request of the head of the agency or organization. The report shall be available for a purpose that is consistent with this subchapter. The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes or by United States intelligence agencies. However, a report and records of reports are exempt from disclosure under section 552 of title 5.”.

(d) AMENDMENT RELATING TO THE PURPOSES OF THE BANK SECRECY ACT PROVISIONS.—Section 21(a) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(a)) is amended to read as follows:

“(a) CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.—

“(1) FINDINGS.—Congress finds that—

“(A) adequate records maintained by insured depository institutions have a high degree of usefulness in crimi-

nal, tax, and regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against domestic and international terrorism; and

“(B) microfilm or other reproductions and other records made by insured depository institutions of checks, as well as records kept by such institutions, of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in proceedings described in subparagraph (A).

“(2) PURPOSE.—It is the purpose of this section to require the maintenance of appropriate types of records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, recognizes that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”.

(e) AMENDMENT RELATING TO THE PURPOSES OF THE BANK SECRECY ACT.—Section 123(a) of Public Law 91–508 (12 U.S.C. 1953(a)) is amended to read as follows:

“(a) REGULATIONS.—If the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b), has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism, he may by regulation require such bank, institution, or person.”.

(f) AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.—The Right to Financial Privacy Act of 1978 is amended—

(1) in section 1112(a) (12 U.S.C. 3412(a)), by inserting “, or intelligence or counterintelligence activity, investigation or analysis related to international terrorism” after “legitimate law enforcement inquiry”;

(2) in section 1114(a)(1) (12 U.S.C. 3414(a)(1))—

(A) in subparagraph (A), by striking “or” at the end;

(B) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(C) a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses.”; and

(3) in section 1120(a)(2) (12 U.S.C. 3420(a)(2)), by inserting “, or for a purpose authorized by section 1112(a)” before the semicolon at the end.

(g) AMENDMENT TO THE FAIR CREDIT REPORTING ACT.—

(1) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(A) by redesignating the second of the 2 sections designated as section 624 (15 U.S.C. 1681u) (relating to disclosure to FBI for counterintelligence purposes) as section 625; and

(B) by adding at the end the following new section:

**“§ 626. Disclosures to governmental agencies for counterterrorism purposes**

“(a) DISCLOSURE.—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer’s file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency’s conduct or such investigation, activity or analysis.

“(b) FORM OF CERTIFICATION.—The certification described in subsection (a) shall be signed by a supervisory official designated by the head of a Federal agency or an officer of a Federal agency whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate.

“(c) CONFIDENTIALITY.—No consumer reporting agency, or officer, employee, or agent of such consumer reporting agency, shall disclose to any person, or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a).

“(d) RULE OF CONSTRUCTION.—Nothing in section 625 shall be construed to limit the authority of the Director of the Federal Bureau of Investigation under this section.

“(e) SAFE HARBOR.—Notwithstanding any other provision of this title, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or other information pursuant to this section in good-faith reliance upon a certification of a governmental agency pursuant to the provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.”.

(2) CLERICAL AMENDMENTS.—The table of sections for the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(A) by redesignating the second of the 2 items designated as section 624 as section 625; and

(B) by inserting after the item relating to section 625 (as so redesignated) the following new item:

“626. Disclosures to governmental agencies for counterterrorism purposes.”.

(h) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply with respect to reports filed or records maintained on, before, or after the date of enactment of this Act.

**SEC. 359. [12 U.S.C. 1829b note] REPORTING OF SUSPICIOUS ACTIVITIES BY UNDERGROUND BANKING SYSTEMS.**

(a) DEFINITION FOR SUBCHAPTER.—Section 5312(a)(2)(R) of title 31, United States Code, is amended to read as follows:

“(R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;”.

(b) MONEY TRANSMITTING BUSINESS.—Section 5330(d)(1)(A) of title 31, United States Code, is amended by inserting before the semicolon the following: “or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;”.

(c) APPLICABILITY OF RULES.—Section 5318 of title 31, United States Code, as amended by this title, is amended by adding at the end the following:

“(l) APPLICABILITY OF RULES.—Any rules promulgated pursuant to the authority contained in section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) shall apply, in addition to any other financial institution to which such rules apply, to any person that engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.”.

(d) [31 U.S.C. 5311 note] REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall report to Congress on the need for any additional legislation relating to persons who engage as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system, counter money laundering and regulatory controls relating to underground money movement and banking systems, including whether the threshold for the filing of suspicious activity reports under section 5318(g) of title 31, United States Code should be lowered in the case of such systems.

**SEC. 360. [22 U.S.C. 262p-4r] USE OF AUTHORITY OF UNITED STATES EXECUTIVE DIRECTORS.**

(a) ACTION BY THE PRESIDENT.—If the President determines that a particular foreign country has taken or has committed to take actions that contribute to efforts of the United States to respond to, deter, or prevent acts of international terrorism, the Secretary may, consistent with other applicable provisions of law, instruct the United States Executive Director of each international financial institution to use the voice and vote of the Executive Director to support any loan or other utilization of the funds of respective institutions for such country, or any public or private entity within such country.

(b) **USE OF VOICE AND VOTE.**—The Secretary may instruct the United States Executive Director of each international financial institution to aggressively use the voice and vote of the Executive Director to require an auditing of disbursements at such institutions to ensure that no funds are paid to persons who commit, threaten to commit, or support terrorism.

(c) **DEFINITION.**—For purposes of this section, the term “international financial institution” means an institution described in section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)).

**SEC. 361. FINANCIAL CRIMES ENFORCEMENT NETWORK.**

(a) **IN GENERAL.**—Subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by redesignating section 310 as section 311; and

(2) by inserting after section 309 the following new section:

**“§ 310. Financial Crimes Enforcement Network**

“(a) **IN GENERAL.**—The Financial Crimes Enforcement Network established by order of the Secretary of the Treasury (Treasury Order Numbered 105-08, in this section referred to as ‘FinCEN’) on April 25, 1990, shall be a bureau in the Department of the Treasury.

“(b) **DIRECTOR.**—

“(1) **APPOINTMENT.**—The head of FinCEN shall be the Director, who shall be appointed by the Secretary of the Treasury.

“(2) **DUTIES AND POWERS.**—The duties and powers of the Director are as follows:

“(A) Advise and make recommendations on matters relating to financial intelligence, financial criminal activities, and other financial activities to the Under Secretary of the Treasury for Enforcement.

“(B) Maintain a government-wide data access service, with access, in accordance with applicable legal requirements, to the following:

“(i) Information collected by the Department of the Treasury, including report information filed under subchapter II of chapter 53 of this title (such as reports on cash transactions, foreign financial agency transactions and relationships, foreign currency transactions, exporting and importing monetary instruments, and suspicious activities), chapter 2 of title I of Public Law 91-508, and section 21 of the Federal Deposit Insurance Act.

“(ii) Information regarding national and international currency flows.

“(iii) Other records and data maintained by other Federal, State, local, and foreign agencies, including financial and other records developed in specific cases.

“(iv) Other privately and publicly available information.

“(C) Analyze and disseminate the available data in accordance with applicable legal requirements and policies and guidelines established by the Secretary of the Treas-

ury and the Under Secretary of the Treasury for Enforcement to—

“(i) identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies;

“(ii) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax and forfeiture proceedings;

“(iii) identify possible instances of noncompliance with subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91-508, and section 21 of the Federal Deposit Insurance Act to Federal agencies with statutory responsibility for enforcing compliance with such provisions and other appropriate Federal regulatory agencies;

“(iv) evaluate and recommend possible uses of special currency reporting requirements under section 5326;

“(v) determine emerging trends and methods in money laundering and other financial crimes;

“(vi) support the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism; and

“(vii) support government initiatives against money laundering.

“(D) Establish and maintain a financial crimes communications center to furnish law enforcement authorities with intelligence information related to emerging or ongoing investigations and undercover operations.

“(E) Furnish research, analytical, and informational services to financial institutions, appropriate Federal regulatory agencies with regard to financial institutions, and appropriate Federal, State, local, and foreign law enforcement authorities, in accordance with policies and guidelines established by the Secretary of the Treasury or the Under Secretary of the Treasury for Enforcement, in the interest of detection, prevention, and prosecution of terrorism, organized crime, money laundering, and other financial crimes.

“(F) Assist Federal, State, local, and foreign law enforcement and regulatory authorities in combatting the use of informal, nonbank networks and payment and barter system mechanisms that permit the transfer of funds or the equivalent of funds without records and without compliance with criminal and tax laws.

“(G) Provide computer and data support and data analysis to the Secretary of the Treasury for tracking and controlling foreign assets.

“(H) Coordinate with financial intelligence units in other countries on anti-terrorism and anti-money laundering initiatives, and similar efforts.

“(I) Administer the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91-508, and section 21 of the Federal Deposit Insurance

Act, to the extent delegated such authority by the Secretary of the Treasury.

“(J) Such other duties and powers as the Secretary of the Treasury may delegate or prescribe.

“(c) REQUIREMENTS RELATING TO MAINTENANCE AND USE OF DATA BANKS.—The Secretary of the Treasury shall establish and maintain operating procedures with respect to the government-wide data access service and the financial crimes communications center maintained by FinCEN which provide—

“(1) for the coordinated and efficient transmittal of information to, entry of information into, and withdrawal of information from, the data maintenance system maintained by the Network, including—

“(A) the submission of reports through the Internet or other secure network, whenever possible;

“(B) the cataloguing of information in a manner that facilitates rapid retrieval by law enforcement personnel of meaningful data; and

“(C) a procedure that provides for a prompt initial review of suspicious activity reports and other reports, or such other means as the Secretary may provide, to identify information that warrants immediate action; and

“(2) in accordance with section 552a of title 5 and the Right to Financial Privacy Act of 1978, appropriate standards and guidelines for determining—

“(A) who is to be given access to the information maintained by the Network;

“(B) what limits are to be imposed on the use of such information; and

“(C) how information about activities or relationships which involve or are closely associated with the exercise of constitutional rights is to be screened out of the data maintenance system.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for FinCEN such sums as may be necessary for fiscal years 2002, 2003, 2004, and 2005.”.

(b) [31 U.S.C. 5314 note] COMPLIANCE WITH REPORTING REQUIREMENTS.—The Secretary of the Treasury shall study methods for improving compliance with the reporting requirements established in section 5314 of title 31, United States Code, and shall submit a report on such study to the Congress by the end of the 6-month period beginning on the date of enactment of this Act and each 1-year period thereafter. The initial report shall include historical data on compliance with such reporting requirements.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by redesignating the item relating to section 310 as section 311; and

(2) by inserting after the item relating to section 309 the following new item:

“310. Financial Crimes Enforcement Network.”.

**SEC. 362. [31 U.S.C. 310 note] ESTABLISHMENT OF HIGHLY SECURE NETWORK.**

(a) IN GENERAL.—The Secretary shall establish a highly secure network in the Financial Crimes Enforcement Network that—

(1) allows financial institutions to file reports required under subchapter II or III of chapter 53 of title 31, United States Code, chapter 2 of Public Law 91-508, or section 21 of the Federal Deposit Insurance Act through the secure network; and

(2) provides financial institutions with alerts and other information regarding suspicious activities that warrant immediate and enhanced scrutiny.

(b) EXPEDITED DEVELOPMENT.—The Secretary shall take such action as may be necessary to ensure that the secure network required under subsection (a) is fully operational before the end of the 9-month period beginning on the date of enactment of this Act.

**SEC. 363. INCREASE IN CIVIL AND CRIMINAL PENALTIES FOR MONEY LAUNDERING.**

(a) CIVIL PENALTIES.—Section 5321(a) of title 31, United States Code, is amended by adding at the end the following:

“(7) PENALTIES FOR INTERNATIONAL COUNTER MONEY LAUNDERING VIOLATIONS.—The Secretary may impose a civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000, on any financial institution or agency that violates any provision of subsection (i) or (j) of section 5318 or any special measures imposed under section 5318A.”.

(b) CRIMINAL PENALTIES.—Section 5322 of title 31, United States Code, is amended by adding at the end the following:

“(d) A financial institution or agency that violates any provision of subsection (i) or (j) of section 5318, or any special measures imposed under section 5318A, or any regulation prescribed under subsection (i) or (j) of section 5318 or section 5318A, shall be fined in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000.”.

**SEC. 364. UNIFORM PROTECTION AUTHORITY FOR FEDERAL RESERVE FACILITIES.**

Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following:

“(q) UNIFORM PROTECTION AUTHORITY FOR FEDERAL RESERVE FACILITIES.—

“(1) Notwithstanding any other provision of law, to authorize personnel to act as law enforcement officers to protect and safeguard the premises, grounds, property, personnel, including members of the Board, of the Board, or any Federal reserve bank, and operations conducted by or on behalf of the Board or a reserve bank.

“(2) The Board may, subject to the regulations prescribed under paragraph (5), delegate authority to a Federal reserve bank to authorize personnel to act as law enforcement officers to protect and safeguard the bank’s premises, grounds, property, personnel, and operations conducted by or on behalf of the bank.

“(3) Law enforcement officers designated or authorized by the Board or a reserve bank under paragraph (1) or (2) are authorized while on duty to carry firearms and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under

the laws of the United States committed or being committed within the buildings and grounds of the Board or a reserve bank if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. Such officers shall have access to law enforcement information that may be necessary for the protection of the property or personnel of the Board or a reserve bank.

“(4) For purposes of this subsection, the term ‘law enforcement officers’ means personnel who have successfully completed law enforcement training and are authorized to carry firearms and make arrests pursuant to this subsection.

“(5) The law enforcement authorities provided for in this subsection may be exercised only pursuant to regulations prescribed by the Board and approved by the Attorney General.”.

**SEC. 365. REPORTS RELATING TO COINS AND CURRENCY RECEIVED IN NONFINANCIAL TRADE OR BUSINESS.**

(a) **REPORTS REQUIRED.**—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following new section:

**“§ 5331. Reports relating to coins and currency received in nonfinancial trade or business**

“(a) **COIN AND CURRENCY RECEIPTS OF MORE THAN \$10,000.**—Any person—

“(1) who is engaged in a trade or business; and

“(2) who, in the course of such trade or business, receives more than \$10,000 in coins or currency in 1 transaction (or 2 or more related transactions),

shall file a report described in subsection (b) with respect to such transaction (or related transactions) with the Financial Crimes Enforcement Network at such time and in such manner as the Secretary may, by regulation, prescribe.

“(b) **FORM AND MANNER OF REPORTS.**—A report is described in this subsection if such report—

“(1) is in such form as the Secretary may prescribe;

“(2) contains—

“(A) the name and address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received;

“(B) the amount of coins or currency received;

“(C) the date and nature of the transaction; and

“(D) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

“(c) **EXCEPTIONS.**—

“(1) **AMOUNTS RECEIVED BY FINANCIAL INSTITUTIONS.**—Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.

“(2) **TRANSACTIONS OCCURRING OUTSIDE THE UNITED STATES.**—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

“(d) CURRENCY INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—

“(1) IN GENERAL.—For purposes of this section, the term ‘currency’ includes—

“(A) foreign currency; and

“(B) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000.

“(2) SCOPE OF APPLICATION.—Paragraph (1)(B) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of section 5312(a)(2).”.

(b) PROHIBITION ON STRUCTURING TRANSACTIONS.—

(1) IN GENERAL.—Section 5324 of title 31, United States Code, is amended—

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(B) by inserting after subsection (a) the following new subsection:

“(b) DOMESTIC COIN AND CURRENCY TRANSACTIONS INVOLVING NONFINANCIAL TRADES OR BUSINESSES.—No person shall, for the purpose of evading the report requirements of section 5333 or any regulation prescribed under such section—

“(1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5333 or any regulation prescribed under such section;

“(2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5333 or any regulation prescribed under such section that contains a material omission or misstatement of fact; or

“(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.”.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) The heading for subsection (a) of section 5324 of title 31, United States Code, is amended by inserting “INVOLVING FINANCIAL INSTITUTIONS” after “TRANSACTIONS”.

(B) Section 5317(c) of title 31, United States Code, is amended by striking “5324(b)” and inserting “5324(c)”.

(c) DEFINITION OF NONFINANCIAL TRADE OR BUSINESS.—

(1) IN GENERAL.—Section 5312(a) of title 31, United States Code, is amended—

(A) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(B) by inserting after paragraph (3) the following new paragraph:

“(4) NONFINANCIAL TRADE OR BUSINESS.—The term ‘nonfinancial trade or business’ means any trade or business other than a financial institution that is subject to the reporting requirements of section 5313 and regulations prescribed under such section.”.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Section 5312(a)(3)(C) of title 31, United States Code, is amended by striking “section 5316,” and inserting “sections 5333 and 5316,”.

(B) Subsections (a) through (f) of section 5318 of title 31, United States Code, and sections 5321, 5326, and 5328 of such title are each amended—

(i) by inserting “or nonfinancial trade or business” after “financial institution” each place such term appears; and

(ii) by inserting “or nonfinancial trades or businesses” after “financial institutions” each place such term appears.

(c)<sup>1</sup> CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5332 (as added by section 112<sup>2</sup> of this title) the following new item:

“5331. Reports relating to coins and currency received in nonfinancial trade or business.”.

(f)<sup>3</sup> [31 U.S.C. 5331 note] REGULATIONS.—Regulations which the Secretary determines are necessary to implement this section shall be published in final form before the end of the 6-month period beginning on the date of enactment of this Act.

**SEC. 366. [31 U.S.C. 5313 note] EFFICIENT USE OF CURRENCY TRANSACTION REPORT SYSTEM.**

(a) FINDINGS.—The Congress finds the following:

(1) The Congress established the currency transaction reporting requirements in 1970 because the Congress found then that such reports have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings and the usefulness of such reports has only increased in the years since the requirements were established.

(2) In 1994, in response to reports and testimony that excess amounts of currency transaction reports were interfering with effective law enforcement, the Congress reformed the currency transaction report exemption requirements to provide—

(A) mandatory exemptions for certain reports that had little usefulness for law enforcement, such as cash transfers between depository institutions and cash deposits from government agencies; and

(B) discretionary authority for the Secretary of the Treasury to provide exemptions, subject to criteria and guidelines established by the Secretary, for financial institutions with regard to regular business customers that maintain accounts at an institution into which frequent cash deposits are made.

(3) Today there is evidence that some financial institutions are not utilizing the exemption system, or are filing reports even if there is an exemption in effect, with the result that the volume of currency transaction reports is once again interfering with effective law enforcement.

(b) STUDY AND REPORT.—

<sup>1</sup> Subsection designation so in law. Should probably be “(d)”.

<sup>2</sup> So in law. Should probably be “365”.

<sup>3</sup> Subsection designation so in law. Should probably be “(e)”.

(1) STUDY REQUIRED.—The Secretary shall conduct a study of—

(A) the possible expansion of the statutory exemption system in effect under section 5313 of title 31, United States Code; and

(B) methods for improving financial institution utilization of the statutory exemption provisions as a way of reducing the submission of currency transaction reports that have little or no value for law enforcement purposes, including improvements in the systems in effect at financial institutions for regular review of the exemption procedures used at the institution and the training of personnel in its effective use.

(2) REPORT REQUIRED.—The Secretary of the Treasury shall submit a report to the Congress before the end of the 1-year period beginning on the date of enactment of this Act containing the findings and conclusions of the Secretary with regard to the study required under subsection (a), and such recommendations for legislative or administrative action as the Secretary determines to be appropriate.

## **Subtitle C—Currency Crimes and Protection**

### **SEC. 371.BULK CASH SMUGGLING INTO OR OUT OF THE UNITED STATES.**

(a) [31 U.S.C. 5332 note] FINDINGS.—The Congress finds the following:

(1) Effective enforcement of the currency reporting requirements of subchapter II of chapter 53 of title 31, United States Code, and the regulations prescribed under such subchapter, has forced drug dealers and other criminals engaged in cash-based businesses to avoid using traditional financial institutions.

(2) In their effort to avoid using traditional financial institutions, drug dealers and other criminals are forced to move large quantities of currency in bulk form to and through the airports, border crossings, and other ports of entry where the currency can be smuggled out of the United States and placed in a foreign financial institution or sold on the black market.

(3) The transportation and smuggling of cash in bulk form may now be the most common form of money laundering, and the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.

(4) The intentional transportation into or out of the United States of large amounts of currency or monetary instruments, in a manner designed to circumvent the mandatory reporting provisions of subchapter II of chapter 53 of title 31, United States Code, is the equivalent of, and creates the same harm as, the smuggling of goods.

(5) The arrest and prosecution of bulk cash smugglers are important parts of law enforcement's effort to stop the laundering of criminal proceeds, but the couriers who attempt to

smuggle the cash out of the United States are typically low-level employees of large criminal organizations, and thus are easily replaced. Accordingly, only the confiscation of the smuggled bulk cash can effectively break the cycle of criminal activity of which the laundering of the bulk cash is a critical part.

(6) The current penalties for violations of the currency reporting requirements are insufficient to provide a deterrent to the laundering of criminal proceeds. In particular, in cases where the only criminal violation under current law is a reporting offense, the law does not adequately provide for the confiscation of smuggled currency. In contrast, if the smuggling of bulk cash were itself an offense, the cash could be confiscated as the corpus delicti of the smuggling offense.

(b) [31 U.S.C. 5332 note] PURPOSES.—The purposes of this section are—

(1) to make the act of smuggling bulk cash itself a criminal offense;

(2) to authorize forfeiture of any cash or instruments of the smuggling offense; and

(3) to emphasize the seriousness of the act of bulk cash smuggling.

(c) ENACTMENT OF BULK CASH SMUGGLING OFFENSE.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

**“§ 5332. Bulk cash smuggling into or out of the United States**

“(a) CRIMINAL OFFENSE.—

“(1) IN GENERAL.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than \$10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense and subject to punishment pursuant to subsection (b).

“(2) CONCEALMENT ON PERSON.—For purposes of this section, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.

“(b) PENALTY.—

“(1) TERM OF IMPRISONMENT.—A person convicted of a currency smuggling offense under subsection (a), or a conspiracy to commit such offense, shall be imprisoned for not more than 5 years.

“(2) FORFEITURE.—In addition, the court, in imposing sentence under paragraph (1), shall order that the defendant forfeit to the United States, any property, real or personal, involved in the offense, and any property traceable to such property, subject to subsection (d) of this section.

“(3) PROCEDURE.—The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act.

“(4) PERSONAL MONEY JUDGMENT.—If the property subject to forfeiture under paragraph (2) is unavailable, and the defendant has insufficient substitute property that may be forfeited pursuant to section 413(p) of the Controlled Substances Act, the court shall enter a personal money judgment against the defendant for the amount that would be subject to forfeiture.

“(c) CIVIL FORFEITURE.—

“(1) IN GENERAL.—Any property involved in a violation of subsection (a), or a conspiracy to commit such violation, and any property traceable to such violation or conspiracy, may be seized and, subject to subsection (d) of this section, forfeited to the United States.

“(2) PROCEDURE.—The seizure and forfeiture shall be governed by the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

“(3) TREATMENT OF CERTAIN PROPERTY AS INVOLVED IN THE OFFENSE.—For purposes of this subsection and subsection (b), any currency or other monetary instrument that is concealed or intended to be concealed in violation of subsection (a) or a conspiracy to commit such violation, any article, container, or conveyance used, or intended to be used, to conceal or transport the currency or other monetary instrument, and any other property used, or intended to be used, to facilitate the offense, shall be considered property involved in the offense.”.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5331, as added by this Act, the following new item:

“5332. Bulk cash smuggling into or out of the United States.”.

**SEC. 372. FORFEITURE IN CURRENCY REPORTING CASES.**

(a) IN GENERAL.—Subsection (c) of section 5317 of title 31, United States Code, is amended to read as follows:

“(c) FORFEITURE.—

“(1) CRIMINAL FORFEITURE.—

“(A) IN GENERAL.—The court in imposing sentence for any violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

“(B) PROCEDURE.—Forfeitures under this paragraph shall be governed by the procedures established in section 413 of the Controlled Substances Act.

“(2) CIVIL FORFEITURE.—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 981(a)(1)(A) of title 18, United States Code, is amended—

(A) by striking “of section 5313(a) or 5324(a) of title 31, or”; and

(B) by striking “However” and all that follows through the end of the subparagraph.

(2) Section 982(a)(1) of title 18, United States Code, is amended—

(A) by striking “of section 5313(a), 5316, or 5324 of title 31, or”; and

(B) by striking “However” and all that follows through the end of the paragraph.

**SEC. 373. ILLEGAL MONEY TRANSMITTING BUSINESSES.**

(a) SCIENTER REQUIREMENT FOR SECTION 1960 VIOLATION.—Section 1960 of title 18, United States Code, is amended to read as follows:

**“§ 1960. Prohibition of unlicensed money transmitting businesses**

“(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

“(b) As used in this section—

“(1) the term ‘unlicensed money transmitting business’ means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

“(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

“(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

“(C) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to be used to promote or support unlawful activity;

“(2) the term ‘money transmitting’ includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

“(3) the term ‘State’ means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.”.

(b) SEIZURE OF ILLEGALLY TRANSMITTED FUNDS.—Section 981(a)(1)(A) of title 18, United States Code, is amended by striking “or 1957” and inserting “, 1957 or 1960”.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 95 of title 18, United States Code, is amended in the item relating to section 1960 by striking “illegal” and inserting “unlicensed”.

**SEC. 374. COUNTERFEITING DOMESTIC CURRENCY AND OBLIGATIONS.**

(a) COUNTERFEIT ACTS COMMITTED OUTSIDE THE UNITED STATES.—Section 470 of title 18, United States Code, is amended—

(1) in paragraph (2), by inserting “analog, digital, or electronic image,” after “plate, stone,”; and

(2) by striking “shall be fined under this title, imprisoned not more than 20 years, or both” and inserting “shall be punished as is provided for the like offense within the United States”.

(b) OBLIGATIONS OR SECURITIES OF THE UNITED STATES.—Section 471 of title 18, United States Code, is amended by striking “fifteen years” and inserting “20 years”.

(c) UTTERING COUNTERFEIT OBLIGATIONS OR SECURITIES.—Section 472 of title 18, United States Code, is amended by striking “fifteen years” and inserting “20 years”.

(d) DEALING IN COUNTERFEIT OBLIGATIONS OR SECURITIES.—Section 473 of title 18, United States Code, is amended by striking “ten years” and inserting “20 years”.

(e) PLATES, STONES, OR ANALOG, DIGITAL, OR ELECTRONIC IMAGES FOR COUNTERFEITING OBLIGATIONS OR SECURITIES.—

(1) IN GENERAL.—Section 474(a) of title 18, United States Code, is amended by inserting after the second paragraph the following new paragraph:

“Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person’s control, custody, or possession, an analog, digital, or electronic image of any obligation or other security of the United States; or”.

(2) AMENDMENT TO DEFINITION.—Section 474(b) of title 18, United States Code, is amended by striking the first sentence and inserting the following new sentence: “For purposes of this section, the term ‘analog, digital, or electronic image’ includes any analog, digital, or electronic method used for the making, execution, acquisition, scanning, capturing, recording, retrieval, transmission, or reproduction of any obligation or security, unless such use is authorized by the Secretary of the Treasury.”.

(3) TECHNICAL AND CONFORMING AMENDMENT.—The heading for section 474 of title 18, United States Code, is amended by striking “**or stones**” and inserting “, **stones, or analog, digital, or electronic images**”.

(4) CLERICAL AMENDMENT.—The table of sections for chapter 25 of title 18, United States Code, is amended in the item relating to section 474 by striking “or stones” and inserting “, stones, or analog, digital, or electronic images”.

(f) TAKING IMPRESSIONS OF TOOLS USED FOR OBLIGATIONS OR SECURITIES.—Section 476 of title 18, United States Code, is amended—

(1) by inserting “analog, digital, or electronic image,” after “impression, stamp,”; and

(2) by striking “ten years” and inserting “25 years”.

(g) POSSESSING OR SELLING IMPRESSIONS OF TOOLS USED FOR OBLIGATIONS OR SECURITIES.—Section 477 of title 18, United States Code, is amended—

(1) in the first paragraph, by inserting “analog, digital, or electronic image,” after “imprint, stamp,”;

(2) in the second paragraph, by inserting “analog, digital, or electronic image,” after “imprint, stamp,”; and

(3) in the third paragraph, by striking “ten years” and inserting “25 years”.

(h) CONNECTING PARTS OF DIFFERENT NOTES.—Section 484 of title 18, United States Code, is amended by striking “five years” and inserting “10 years”.

(i) BONDS AND OBLIGATIONS OF CERTAIN LENDING AGENCIES.—The first and second paragraphs of section 493 of title 18, United States Code, are each amended by striking “five years” and inserting “10 years”.

**SEC. 375. COUNTERFEITING FOREIGN CURRENCY AND OBLIGATIONS.**

(a) FOREIGN OBLIGATIONS OR SECURITIES.—Section 478 of title 18, United States Code, is amended by striking “five years” and inserting “20 years”.

(b) UTTERING COUNTERFEIT FOREIGN OBLIGATIONS OR SECURITIES.—Section 479 of title 18, United States Code, is amended by striking “three years” and inserting “20 years”.

(c) POSSESSING COUNTERFEIT FOREIGN OBLIGATIONS OR SECURITIES.—Section 480 of title 18, United States Code, is amended by striking “one year” and inserting “20 years”.

(d) PLATES, STONES, OR ANALOG, DIGITAL, OR ELECTRONIC IMAGES FOR COUNTERFEITING FOREIGN OBLIGATIONS OR SECURITIES.—

(1) IN GENERAL.—Section 481 of title 18, United States Code, is amended by inserting after the second paragraph the following new paragraph:

“Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person’s control, custody, or possession, an analog, digital, or electronic image of any bond, certificate, obligation, or other security of any foreign government, or of any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money; or”.

(2) INCREASED SENTENCE.—The last paragraph of section 481 of title 18, United States Code, is amended by striking “five years” and inserting “25 years”.

(3) TECHNICAL AND CONFORMING AMENDMENT.—The heading for section 481 of title 18, United States Code, is amended by striking “**or stones**” and inserting “, **stones, or analog, digital, or electronic images**”.

(4) CLERICAL AMENDMENT.—The table of sections for chapter 25 of title 18, United States Code, is amended in the item relating to section 481 by striking “or stones” and inserting “, stones, or analog, digital, or electronic images”.

(e) FOREIGN BANK NOTES.—Section 482 of title 18, United States Code, is amended by striking “two years” and inserting “20 years”.

(f) **UTTERING COUNTERFEIT FOREIGN BANK NOTES.**—Section 483 of title 18, United States Code, is amended by striking “one year” and inserting “20 years”.

**SEC. 376. LAUNDERING THE PROCEEDS OF TERRORISM.**

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting “or 2339B” after “2339A”.

**SEC. 377. EXTRATERRITORIAL JURISDICTION.**

Section 1029 of title 18, United States Code, is amended by adding at the end the following:

“(h) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsection (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment, and forfeiture provided in this title if—

“(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

“(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secrets, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.”.

## **TITLE IV—PROTECTING THE BORDER**

### **Subtitle A—Protecting the Northern Border**

**SEC. 401. ENSURING ADEQUATE PERSONNEL ON THE NORTHERN BORDER.**

The Attorney General is authorized to waive any FTE cap on personnel assigned to the Immigration and Naturalization Service on the Northern border.

**SEC. 402. NORTHERN BORDER PERSONNEL.**

There are authorized to be appropriated—

(1) such sums as may be necessary to triple the number of Border Patrol personnel (from the number authorized under current law), and the necessary personnel and facilities to support such personnel, in each State along the Northern Border;

(2) such sums as may be necessary to triple the number of Customs Service personnel (from the number authorized under current law), and the necessary personnel and facilities to support such personnel, at ports of entry in each State along the Northern Border;

(3) such sums as may be necessary to triple the number of INS inspectors (from the number authorized on the date of the enactment of this Act), and the necessary personnel and facilities to support such personnel, at ports of entry in each State along the Northern Border; and

(4) an additional \$50,000,000 each to the Immigration and Naturalization Service and the United States Customs Service

for purposes of making improvements in technology for monitoring the Northern Border and acquiring additional equipment at the Northern Border.

**SEC. 403. ACCESS BY THE DEPARTMENT OF STATE AND THE INS TO CERTAIN IDENTIFYING INFORMATION IN THE CRIMINAL HISTORY RECORDS OF VISA APPLICANTS AND APPLICANTS FOR ADMISSION TO THE UNITED STATES.**

(a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.— Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105) is amended—

(1) in the section heading, by inserting “; DATA EXCHANGE” after “SECURITY OFFICERS”;

(2) by inserting “(a)” after “SEC. 105.”;

(3) in subsection (a), by inserting “and border” after “internal” the second place it appears; and

(4) by adding at the end the following:

“(b)(1) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service access to the criminal history record information contained in the National Crime Information Center’s Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purpose of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file.

“(2) Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge.

“(3) The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon with the agency receiving the access. Upon receipt of such updated extracts, the receiving agency shall make corresponding updates to its database and destroy previously provided extracts.

“(4) Access to an extract does not entitle the Department of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State shall submit the applicant’s fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

“(c) The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of a more cost-effective and efficient means of sharing the information.

“(d) For purposes of administering this section, the Department of State shall, prior to receiving access to NCIC data but not later than 4 months after the date of enactment of this subsection, promulgate final regulations—

“(1) to implement procedures for the taking of fingerprints; and

“(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—

“(A) to limit the dissemination of such information;

“(B) to ensure that such information is used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States;

“(C) to ensure the security, confidentiality, and destruction of such information; and

“(D) to protect any privacy rights of individuals who are subjects of such information.”.

(b) **[8 U.S.C. 1105 note] REPORTING REQUIREMENT.**—Not later than 2 years after the date of enactment of this Act, the Attorney General and the Secretary of State jointly shall report to Congress on the implementation of the amendments made by this section.

(c) **[8 U.S.C. 1379] TECHNOLOGY STANDARD TO CONFIRM IDENTITY.**—

(1) **IN GENERAL.**—The Attorney General and the Secretary of State jointly, through the National Institute of Standards and Technology (NIST), and in consultation with the Secretary of the Treasury and other Federal law enforcement and intelligence agencies the Attorney General or Secretary of State deems appropriate and in consultation with Congress, shall within 15 months after the date of the enactment of this section, develop and certify a technology standard, including appropriate biometric identifier standards, that can be used to verify the identity of persons applying for a United States visa or such persons seeking to enter the United States pursuant to a visa for the purposes of conducting background checks, confirming identity, and ensuring that a person has not received a visa under a different name or such person seeking to enter the United States pursuant to a visa.

(2) **INTEROPERABLE.**—The technology standard developed pursuant to paragraph (1), shall be the technological basis for a cross-agency, cross-platform electronic system that is a cost-effective, efficient, fully interoperable means to share law enforcement and intelligence information necessary to confirm the identity of such persons applying for a United States visa or such person seeking to enter the United States pursuant to a visa.

(3) **ACCESSIBLE.**—The electronic system described in paragraph (2), once implemented, shall be readily and easily accessible to—

(A) all consular officers responsible for the issuance of visas;

(B) all Federal inspection agents at all United States border inspection points; and

(C) all law enforcement and intelligence officers as determined by regulation to be responsible for investigation or identification of aliens admitted to the United States pursuant to a visa.

(4) **REPORT.**—Not later than one year after the date of the enactment of this Act, and every 2 years thereafter, the Attorney General and the Secretary of State shall jointly, in consultation with the Secretary of Treasury, report to Congress describing the development, implementation, efficacy, and privacy implications of the technology standard and electronic database system described in this subsection.

(5) FUNDING.—There is authorized to be appropriated to the Secretary of State, the Attorney General, and the Director of the National Institute of Standards and Technology such sums as may be necessary to carry out the provisions of this subsection.

(d) [8 U.S.C. 1105 note] STATUTORY CONSTRUCTION.—Nothing in this section, or in any other law, shall be construed to limit the authority of the Attorney General or the Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), or to any other information maintained by the NCIC, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States, for the purpose of such enforcement or administration, upon terms that are consistent with the National Crime Prevention and Privacy Compact Act of 1998 (subtitle A of title II of Public Law 105-251; 42 U.S.C. 14611-16) and section 552a of title 5, United States Code.

**SEC. 404. LIMITED AUTHORITY TO PAY OVERTIME.**

The matter under the headings "Immigration And Naturalization Service: Salaries and Expenses, Enforcement And Border Affairs" and "Immigration And Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration And Program Direction" in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106-553 (114 Stat. 2762A-58 to 2762A-59)) is amended by striking the following each place it occurs: "Provided, That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of \$30,000 during the calendar year beginning January 1, 2001:".

**SEC. 405. [8 U.S.C. 1379 note] REPORT ON THE INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM FOR PORTS OF ENTRY AND OVERSEAS CONSULAR POSTS.**

(a) IN GENERAL.—The Attorney General, in consultation with the appropriate heads of other Federal agencies, including the Secretary of State, Secretary of the Treasury, and the Secretary of Transportation, shall report to Congress on the feasibility of enhancing the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation and other identification systems in order to better identify a person who holds a foreign passport or a visa and may be wanted in connection with a criminal investigation in the United States or abroad, before the issuance of a visa to that person or the entry or exit from the United States by that person.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not less than \$2,000,000 to carry out this section.

## Subtitle B—Enhanced Immigration Provisions

### SEC. 411. DEFINITIONS RELATING TO TERRORISM.

(a) GROUNDS OF INADMISSIBILITY.—Section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)) is amended—

(1) in subparagraph (B)—

(A) in clause (i)—

(i) by amending subclause (IV) to read as follows:

“(IV) is a representative (as defined in clause (v)) of—

“(aa) a foreign terrorist organization, as designated by the Secretary of State under section 219, or

“(bb) a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities.”;

(ii) in subclause (V), by inserting “or” after “section 219.”; and

(iii) by adding at the end the following new subclauses:

“(VI) has used the alien’s position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities, or

“(VII) is the spouse or child of an alien who is inadmissible under this section, if the activity causing the alien to be found inadmissible occurred within the last 5 years.”;

(B) by redesignating clauses (ii), (iii), and (iv) as clauses (iii), (iv), and (v), respectively;

(C) in clause (i)(II), by striking “clause (iii)” and inserting “clause (iv)”;

(D) by inserting after clause (i) the following:

“(ii) EXCEPTION.—Subclause (VII) of clause (i) does not apply to a spouse or child—

“(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

“(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.”;

(E) in clause (iii) (as redesignated by subparagraph (B))—

(i) by inserting “it had been” before “committed in the United States”; and

(ii) in subclause (V)(b), by striking “or firearm” and inserting “, firearm, or other weapon or dangerous device”;

(F) by amending clause (iv) (as redesignated by subparagraph (B)) to read as follows:

“(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this chapter, the term ‘engage in terrorist activity’ means, in an individual capacity or as a member of an organization—

“(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

“(II) to prepare or plan a terrorist activity;

“(III) to gather information on potential targets for terrorist activity;

“(IV) to solicit funds or other things of value for—

“(aa) a terrorist activity;

“(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

“(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization’s terrorist activity;

“(V) to solicit any individual—

“(aa) to engage in conduct otherwise described in this clause;

“(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

“(cc) for membership in a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization’s terrorist activity; or

“(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

“(aa) for the commission of a terrorist activity;

“(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

“(cc) to a terrorist organization described in clause (vi)(I) or (vi)(II); or

“(dd) to a terrorist organization described in clause (vi)(III), unless the actor can dem-

onstrate that he did not know, and should not reasonably have known, that the act would further the organization's terrorist activity.

This clause shall not apply to any material support the alien afforded to an organization or individual that has committed terrorist activity, if the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, concludes in his sole unreviewable discretion, that this clause should not apply.”; and

(G) by adding at the end the following new clause:

“(vi) **TERRORIST ORGANIZATION DEFINED.**—As used in clause (i)(VI) and clause (iv), the term ‘terrorist organization’ means an organization—

“(I) designated under section 219;

“(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that the organization engages in the activities described in subclause (I), (II), or (III) of clause (iv), or that the organization provides material support to further terrorist activity; or

“(III) that is a group of two or more individuals, whether organized or not, which engages in the activities described in subclause (I), (II), or (III) of clause (iv).”; and

(2) by adding at the end the following new subparagraph:

“(F) **ASSOCIATION WITH TERRORIST ORGANIZATIONS.**—Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 237(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(B)) is amended by striking “section 212(a)(3)(B)(iii)” and inserting “section 212(a)(3)(B)(iv)”.

(2) Section 208(b)(2)(A)(v) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended by striking “or (IV)” and inserting “(IV), or (VI)”.

(c) **[8 U.S.C. 1182 note] RETROACTIVE APPLICATION OF AMENDMENTS.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(A) actions taken by an alien before, on, or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into the United States—

- (i) in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date); or
- (ii) seeking admission to the United States on or after such date.

(2) SPECIAL RULE FOR ALIENS IN EXCLUSION OR DEPORTATION PROCEEDINGS.—Notwithstanding any other provision of law, sections 212(a)(3)(B) and 237(a)(4)(B) of the Immigration and Nationality Act, as amended by this Act, shall apply to all aliens in exclusion or deportation proceedings on or after the date of the enactment of this Act (except for proceedings in which there has been a final administrative decision before such date) as if such proceedings were removal proceedings.

(3) SPECIAL RULE FOR SECTION 219 ORGANIZATIONS AND ORGANIZATIONS DESIGNATED UNDER SECTION 212(a)(3)(B)(vi)(II).—

(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a), on the ground that the alien engaged in a terrorist activity described in subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a group at any time when the group was not a terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189) or otherwise designated under section 212(a)(3)(B)(vi)(II) of such Act (as so amended).

(B) STATUTORY CONSTRUCTION.—Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having engaged in a terrorist activity—

- (i) described in subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act or otherwise designated under section 212(a)(3)(B)(vi)(II) of such Act (as so amended); or
- (ii) described in subclause (IV)(cc), (V)(cc), or (VI)(dd) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a terrorist organization described in section 212(a)(3)(B)(vi)(III) of such Act (as so amended).

(4) EXCEPTION.—The Secretary of State, in consultation with the Attorney General, may determine that the amendments made by this section shall not apply with respect to actions by an alien taken outside the United States before the date of the enactment of this Act upon the recommendation of a consular officer who has concluded that there is not reasonable ground to believe that the alien knew or reasonably should have known that the actions would further a terrorist activity.

(c)<sup>1</sup> DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.—Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) is amended—

(1) in paragraph (1)(B), by inserting “or terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)(2)), or retains the capability and intent to engage in terrorist activity or terrorism” after “212(a)(3)(B)”;

(2) in paragraph (1)(C), by inserting “or terrorism” after “terrorist activity”;

(3) by amending paragraph (2)(A) to read as follows:

“(A) NOTICE.—

“(i) TO CONGRESSIONAL LEADERS.—Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

“(ii) PUBLICATION IN FEDERAL REGISTER.—The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).”;

(4) in paragraph (2)(B)(i), by striking “subparagraph (A)” and inserting “subparagraph (A)(ii)”;

(5) in paragraph (2)(C), by striking “paragraph (2)” and inserting “paragraph (2)(A)(i)”;

(6) in paragraph (3)(B), by striking “subsection (c)” and inserting “subsection (b)”;

(7) in paragraph (4)(B), by inserting after the first sentence the following: “The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.”;

(8) in paragraph (6)(A)—

(A) by inserting “or a redesignation made under paragraph (4)(B)” after “paragraph (1)”;

(B) in clause (i)—

(i) by inserting “or redesignation” after “designation” the first place it appears; and

(ii) by striking “of the designation”; and

(C) in clause (ii), by striking “of the designation”;

(9) in paragraph (6)(B)—

<sup>1</sup> Subsection designation so in law. Should probably be “(d)”.

- (A) by striking “through (4)” and inserting “and (3)”; and
- (B) by inserting at the end the following new sentence: “Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.”;
- (10) in paragraph (7), by inserting “, or the revocation of a redesignation under paragraph (6),” after “paragraph (5) or (6)”; and
- (11) in paragraph (8)—
- (A) by striking “paragraph (1)(B)” and inserting “paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)”;
- (B) by inserting “or an alien in a removal proceeding” after “criminal action”; and
- (C) by inserting “or redesignation” before “as a defense”.

**SEC. 412. MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW.**

(a) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 236 the following:

“MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW

“SEC. 236A. (a) DETENTION OF TERRORIST ALIENS.—

“(1) CUSTODY.—The Attorney General shall take into custody any alien who is certified under paragraph (3).

“(2) RELEASE.—Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3). If the alien is finally determined not to be removable, detention pursuant to this subsection shall terminate.

“(3) CERTIFICATION.—The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—

“(A) is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 237(a)(4)(A)(i), 237(a)(4)(A)(iii), or 237(a)(4)(B); or

“(B) is engaged in any other activity that endangers the national security of the United States.

“(4) NONDELEGATION.—The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

“(5) COMMENCEMENT OF PROCEEDINGS.—The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such

detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

“(6) LIMITATION ON INDEFINITE DETENTION.—An alien detained solely under paragraph (1) who has not been removed under section 241(a)(1)(A), and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months only if the release of the alien will threaten the national security of the United States or the safety of the community or any person.

“(7) REVIEW OF CERTIFICATION.—The Attorney General shall review the certification made under paragraph (3) every 6 months. If the Attorney General determines, in the Attorney General’s discretion, that the certification should be revoked, the alien may be released on such conditions as the Attorney General deems appropriate, unless such release is otherwise prohibited by law. The alien may request each 6 months in writing that the Attorney General reconsider the certification and may submit documents or other evidence in support of that request.

“(b) HABEAS CORPUS AND JUDICIAL REVIEW.—

“(1) IN GENERAL.—Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3) or (a)(6)) is available exclusively in habeas corpus proceedings consistent with this subsection. Except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.

“(2) APPLICATION.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, including section 2241(a) of title 28, United States Code, habeas corpus proceedings described in paragraph (1) may be initiated only by an application filed with—

“(i) the Supreme Court;

“(ii) any justice of the Supreme Court;

“(iii) any circuit judge of the United States Court of Appeals for the District of Columbia Circuit; or

“(iv) any district court otherwise having jurisdiction to entertain it.

“(B) APPLICATION TRANSFER.—Section 2241(b) of title 28, United States Code, shall apply to an application for a writ of habeas corpus described in subparagraph (A).

“(3) APPEALS.—Notwithstanding any other provision of law, including section 2253 of title 28, in habeas corpus proceedings described in paragraph (1) before a circuit or district judge, the final order shall be subject to review, on appeal, by the United States Court of Appeals for the District of Columbia Circuit. There shall be no right of appeal in such proceedings to any other circuit court of appeals.

“(4) RULE OF DECISION.—The law applied by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit shall be regarded as the rule of decision in habeas corpus proceedings described in paragraph (1).

“(c) STATUTORY CONSTRUCTION.—The provisions of this section shall not be applicable to any other provision of this Act.”

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236 the following:

“Sec. 236A. Mandatory detention of suspected terrorist; habeas corpus; judicial review.”.

(c) [8 U.S.C. 1226a note] REPORTS.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on—

(1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act, as added by subsection (a);

(2) the grounds for such certifications;

(3) the nationalities of the aliens so certified;

(4) the length of the detention for each alien so certified; and

(5) the number of aliens so certified who—

(A) were granted any form of relief from removal;

(B) were removed;

(C) the Attorney General has determined are no longer aliens who may be so certified; or

(D) were released from detention.

**SEC. 413. MULTILATERAL COOPERATION AGAINST TERRORISTS.**

Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) is amended—

(1) by striking “except that in the discretion of” and inserting the following: “except that—

“(1) in the discretion of”; and

(2) by adding at the end the following:

“(2) the Secretary of State, in the Secretary’s discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State’s computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database—

“(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or illicit weapons; or

“(B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.”.

**SEC. 414. [8 U.S.C. 1365a note] VISA INTEGRITY AND SECURITY.**

(a) SENSE OF CONGRESS REGARDING THE NEED TO EXPEDITE IMPLEMENTATION OF INTEGRATED ENTRY AND EXIT DATA SYSTEM.—

(1) SENSE OF CONGRESS.—In light of the terrorist attacks perpetrated against the United States on September 11, 2001, it is the sense of the Congress that—

(A) the Attorney General, in consultation with the Secretary of State, should fully implement the integrated entry and exit data system for airports, seaports, and land border ports of entry, as specified in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), with all deliberate speed and as expeditiously as practicable; and

(B) the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of the Treasury, and the Office of Homeland Security, should immediately begin establishing the Integrated Entry and Exit Data System Task Force, as described in section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–215).

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to fully implement the system described in paragraph (1)(A).

(b) DEVELOPMENT OF THE SYSTEM.—In the development of the integrated entry and exit data system under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), the Attorney General and the Secretary of State shall particularly focus on—

(1) the utilization of biometric technology; and

(2) the development of tamper-resistant documents readable at ports of entry.

(c) INTERFACE WITH LAW ENFORCEMENT DATABASES.—The entry and exit data system described in this section shall be able to interface with law enforcement databases for use by Federal law enforcement to identify and detain individuals who pose a threat to the national security of the United States.

(d) REPORT ON SCREENING INFORMATION.—Not later than 12 months after the date of enactment of this Act, the Office of Homeland Security shall submit a report to Congress on the information that is needed from any United States agency to effectively screen visa applicants and applicants for admission to the United States to identify those affiliated with terrorist organizations or those that pose any threat to the safety or security of the United States, including the type of information currently received by United States agencies and the regularity with which such information is transmitted to the Secretary of State and the Attorney General.

**SEC. 415. [8 U.S.C. 1365a note] PARTICIPATION OF OFFICE OF HOMELAND SECURITY ON ENTRY-EXIT TASK FORCE.**

Section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–215) is amended by striking “and the Secretary of the Treasury,” and inserting “the Secretary of the Treasury, and the Office of Homeland Security”.

**SEC. 416. FOREIGN STUDENT MONITORING PROGRAM.**

(a) [8 U.S.C. 1372 note] FULL IMPLEMENTATION AND EXPANSION OF FOREIGN STUDENT VISA MONITORING PROGRAM RE-

REQUIRED.—The Attorney General, in consultation with the Secretary of State, shall fully implement and expand the program established by section 641(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(a)).

(b) **[8 U.S.C. 1372 note] INTEGRATION WITH PORT OF ENTRY INFORMATION.**—For each alien with respect to whom information is collected under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), the Attorney General, in consultation with the Secretary of State, shall include information on the date of entry and port of entry.

(c) **EXPANSION OF SYSTEM TO INCLUDE OTHER APPROVED EDUCATIONAL INSTITUTIONS.**—Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is amended—

(1) in subsection (a)(1), subsection (c)(4)(A), and subsection (d)(1) (in the text above subparagraph (A)), by inserting “, other approved educational institutions,” after “higher education” each place it appears;

(2) in subsections (c)(1)(C), (c)(1)(D), and (d)(1)(A), by inserting “, or other approved educational institution,” after “higher education” each place it appears;

(3) in subsections (d)(2), (e)(1), and (e)(2), by inserting “, other approved educational institution,” after “higher education” each place it appears; and

(4) in subsection (h), by adding at the end the following new paragraph:

“(3) **OTHER APPROVED EDUCATIONAL INSTITUTION.**—The term ‘other approved educational institution’ includes any air flight school, language training school, or vocational school, approved by the Attorney General, in consultation with the Secretary of Education and the Secretary of State, under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act.”.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Department of Justice \$36,800,000 for the period beginning on the date of enactment of this Act and ending on January 1, 2003, to fully implement and expand prior to January 1, 2003, the program established by section 641(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(a)).

**SEC. 417. MACHINE READABLE PASSPORTS.**

(a) **[8 U.S.C. 1187 note] AUDITS.**—The Secretary of State shall, each fiscal year until September 30, 2007—

(1) perform annual audits of the implementation of section 217(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(B));

(2) check for the implementation of precautionary measures to prevent the counterfeiting and theft of passports; and

(3) ascertain that countries designated under the visa waiver program have established a program to develop tamper-resistant passports.

(b) **[8 U.S.C. 1187 note] PERIODIC REPORTS.**—Beginning one year after the date of enactment of this Act, and every year thereafter until 2007, the Secretary of State shall submit a report to

Congress setting forth the findings of the most recent audit conducted under subsection (a)(1).

(c) **ADVANCING DEADLINE FOR SATISFACTION OF REQUIREMENT.**—Section 217(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1187(a)(3)) is amended by striking “2007” and inserting “2003”.

(d) **WAIVER.**—Section 217(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1187(a)(3)) is amended—

(1) by striking “On or after” and inserting the following:

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), on or after”; and

(2) by adding at the end the following:

“(B) **LIMITED WAIVER AUTHORITY.**—For the period beginning October 1, 2003, and ending September 30, 2007, the Secretary of State may waive the requirement of subparagraph (A) with respect to nationals of a program country (as designated under subsection (c)), if the Secretary of State finds that the program country—

“(i) is making progress toward ensuring that passports meeting the requirement of subparagraph (A) are generally available to its nationals; and

“(ii) has taken appropriate measures to protect against misuse of passports the country has issued that do not meet the requirement of subparagraph (A).”.

**SEC. 418. [8 U.S.C. 1201 note] PREVENTION OF CONSULATE SHOPPING.**

(a) **REVIEW.**—The Secretary of State shall review how consular officers issue visas to determine if consular shopping is a problem.

(b) **ACTIONS TO BE TAKEN.**—If the Secretary of State determines under subsection (a) that consular shopping is a problem, the Secretary shall take steps to address the problem and shall submit a report to Congress describing what action was taken.

## **Subtitle C—Preservation of Immigration Benefits for Victims of Terrorism**

**SEC. 421. SPECIAL IMMIGRANT STATUS.**

(a) **IN GENERAL.**—For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Attorney General may provide an alien described in subsection (b) with the status of a special immigrant under section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)), if the alien—

(1) files with the Attorney General a petition under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4)); and

(2) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility, the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

(b) **ALIENS DESCRIBED.**—

(1) **PRINCIPAL ALIENS.**—An alien is described in this subsection if—

(A) the alien was the beneficiary of—  
(i) a petition that was filed with the Attorney General on or before September 11, 2001—

(I) under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) to classify the alien as a family-sponsored immigrant under section 203(a) of such Act (8 U.S.C. 1153(a)) or as an employment-based immigrant under section 203(b) of such Act (8 U.S.C. 1153(b)); or

(II) under section 214(d) (8 U.S.C. 1184(d)) of such Act to authorize the issuance of a non-immigrant visa to the alien under section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)); or

(ii) an application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)) that was filed under regulations of the Secretary of Labor on or before such date; and

(B) such petition or application was revoked or terminated (or otherwise rendered null), either before or after its approval, due to a specified terrorist activity that directly resulted in—

(i) the death or disability of the petitioner, applicant, or alien beneficiary; or

(ii) loss of employment due to physical damage to, or destruction of, the business of the petitioner or applicant.

(2) SPOUSES AND CHILDREN.—

(A) IN GENERAL.—An alien is described in this subsection if—

(i) the alien was, on September 10, 2001, the spouse or child of a principal alien described in paragraph (1); and

(ii) the alien—

(I) is accompanying such principal alien; or

(II) is following to join such principal alien not later than September 11, 2003.

(B) CONSTRUCTION.—For purposes of construing the terms “accompanying” and “following to join” in subparagraph (A)(ii), any death of a principal alien that is described in paragraph (1)(B)(i) shall be disregarded.

(3) GRANDPARENTS OF ORPHANS.—An alien is described in this subsection if the alien is a grandparent of a child, both of whose parents died as a direct result of a specified terrorist activity, if either of such deceased parents was, on September 10, 2001, a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States.

(c) PRIORITY DATE.—Immigrant visas made available under this section shall be issued to aliens in the order in which a petition on behalf of each such alien is filed with the Attorney General under subsection (a)(1), except that if an alien was assigned a priority date with respect to a petition described in subsection (b)(1)(A)(i), the alien may maintain that priority date.

(d) NUMERICAL LIMITATIONS.—For purposes of the application of sections 201 through 203 of the Immigration and Nationality Act

(8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be provided status under this section shall be treated as special immigrants described in section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) who are not described in subparagraph (A), (B), (C), or (K) of such section.

**SEC. 422. EXTENSION OF FILING OR REENTRY DEADLINES.**

**(a) AUTOMATIC EXTENSION OF NONIMMIGRANT STATUS.—**

(1) **IN GENERAL.**—Notwithstanding section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), in the case of an alien described in paragraph (2) who was lawfully present in the United States as a nonimmigrant on September 10, 2001, the alien may remain lawfully in the United States in the same nonimmigrant status until the later of—

(A) the date such lawful nonimmigrant status otherwise would have terminated if this subsection had not been enacted; or

(B) 1 year after the death or onset of disability described in paragraph (2).

**(2) ALIENS DESCRIBED.—**

(A) **PRINCIPAL ALIENS.**—An alien is described in this paragraph if the alien was disabled as a direct result of a specified terrorist activity.

(B) **SPOUSES AND CHILDREN.**—An alien is described in this paragraph if the alien was, on September 10, 2001, the spouse or child of—

(i) a principal alien described in subparagraph (A);

or

(ii) an alien who died as a direct result of a specified terrorist activity.

(3) **AUTHORIZED EMPLOYMENT.**—During the period in which a principal alien or alien spouse is in lawful nonimmigrant status under paragraph (1), the alien shall be provided an “employment authorized” endorsement or other appropriate document signifying authorization of employment not later than 30 days after the alien requests such authorization.

**(b) NEW DEADLINES FOR EXTENSION OR CHANGE OF NON-IMMIGRANT STATUS.—**

(1) **FILING DELAYS.**—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien’s application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due.

(2) **DEPARTURE DELAYS.**—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien is unable timely to depart the United States as a direct result of a specified terrorist activity, the alien shall not be considered to have been unlawfully present in the United States during the period beginning on September 11, 2001, and ending on the date of the alien’s departure, if such departure occurs on or before November 11, 2001.

(3) SPECIAL RULE FOR ALIENS UNABLE TO RETURN FROM ABROAD.—

(A) PRINCIPAL ALIENS.—In the case of an alien who was in a lawful nonimmigrant status on September 10, 2001, but who was not present in the United States on such date, if the alien was prevented from returning to the United States in order to file a timely application for an extension of nonimmigrant status as a direct result of a specified terrorist activity—

(i) the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due; and

(ii) the alien's lawful nonimmigrant status shall be considered to continue until the later of—

(I) the date such status otherwise would have terminated if this subparagraph had not been enacted; or

(II) the date that is 60 days after the date on which the application described in clause (i) otherwise would have been due.

(B) SPOUSES AND CHILDREN.—In the case of an alien who is the spouse or child of a principal alien described in subparagraph (A), if the spouse or child was in a lawful nonimmigrant status on September 10, 2001, the spouse or child may remain lawfully in the United States in the same nonimmigrant status until the later of—

(i) the date such lawful nonimmigrant status otherwise would have terminated if this subparagraph had not been enacted; or

(ii) the date that is 60 days after the date on which the application described in subparagraph (A) otherwise would have been due.

(4) CIRCUMSTANCES PREVENTING TIMELY ACTION.—

(A) FILING DELAYS.—For purposes of paragraph (1), circumstances preventing an alien from timely acting are—

(i) office closures;

(ii) mail or courier service cessations or delays;

and

(iii) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

(B) DEPARTURE AND RETURN DELAYS.—For purposes of paragraphs (2) and (3), circumstances preventing an alien from timely acting are—

(i) office closures;

(ii) airline flight cessations or delays; and

(iii) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

(c) DIVERSITY IMMIGRANTS.—

(1) WAIVER OF FISCAL YEAR LIMITATION.—Notwithstanding section 203(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(e)(2)), an immigrant visa number issued to an alien under section 203(c) of such Act for fiscal year 2001 may

be used by the alien during the period beginning on October 1, 2001, and ending on April 1, 2002, if the alien establishes that the alien was prevented from using it during fiscal year 2001 as a direct result of a specified terrorist activity.

(2) **WORLDWIDE LEVEL.**—In the case of an alien entering the United States as a lawful permanent resident, or adjusting to that status, under paragraph (1) or (3), the alien shall be counted as a diversity immigrant for fiscal year 2001 for purposes of section 201(e) of the Immigration and Nationality Act (8 U.S.C. 1151(e)), unless the worldwide level under such section for such year has been exceeded, in which case the alien shall be counted as a diversity immigrant for fiscal year 2002.

(3) **TREATMENT OF FAMILY MEMBERS OF CERTAIN ALIENS.**—In the case of a principal alien issued an immigrant visa number under section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)) for fiscal year 2001, if such principal alien died as a direct result of a specified terrorist activity, the aliens who were, on September 10, 2001, the spouse and children of such principal alien shall, until June 30, 2002, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of section 203 of such Act, be entitled to the same status, and the same order of consideration, that would have been provided to such alien spouse or child under section 203(d) of such Act as if the principal alien were not deceased and as if the spouse or child's visa application had been adjudicated by September 30, 2001.

(4) **CIRCUMSTANCES PREVENTING TIMELY ACTION.**—For purposes of paragraph (1), circumstances preventing an alien from using an immigrant visa number during fiscal year 2001 are—

- (A) office closures;
- (B) mail or courier service cessations or delays;
- (C) airline flight cessations or delays; and
- (D) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

(d) **EXTENSION OF EXPIRATION OF IMMIGRANT VISAS.**—

(1) **IN GENERAL.**—Notwithstanding the limitations under section 221(c) of the Immigration and Nationality Act (8 U.S.C. 1201(c)), in the case of any immigrant visa issued to an alien that expires or expired before December 31, 2001, if the alien was unable to effect entry into the United States as a direct result of a specified terrorist activity, then the period of validity of the visa is extended until December 31, 2001, unless a longer period of validity is otherwise provided under this subtitle.

(2) **CIRCUMSTANCES PREVENTING ENTRY.**—For purposes of this subsection, circumstances preventing an alien from effecting entry into the United States are—

- (A) office closures;
- (B) airline flight cessations or delays; and
- (C) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

(e) **GRANTS OF PAROLE EXTENDED.**—

(1) **IN GENERAL.**—In the case of any parole granted by the Attorney General under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) that expires on a date on or after September 11, 2001, if the alien beneficiary of the parole was unable to return to the United States prior to the expiration date as a direct result of a specified terrorist activity, the parole is deemed extended for an additional 90 days.

(2) **CIRCUMSTANCES PREVENTING RETURN.**—For purposes of this subsection, circumstances preventing an alien from timely returning to the United States are—

(A) office closures;

(B) airline flight cessations or delays; and

(C) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

(f) **VOLUNTARY DEPARTURE.**—Notwithstanding section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), if a period for voluntary departure under such section expired during the period beginning on September 11, 2001, and ending on October 11, 2001, such voluntary departure period is deemed extended for an additional 30 days.

**SEC. 423. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING SPOUSES AND CHILDREN.**

(a) **TREATMENT AS IMMEDIATE RELATIVES.**—

(1) **SPOUSES.**—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen died as a direct result of a specified terrorist activity, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act within 2 years after such date and only until the date the alien remarries. For purposes of such section 204(a)(1)(A)(ii), an alien granted relief under the preceding sentence shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

(2) **CHILDREN.**—

(A) **IN GENERAL.**—In the case of an alien who was the child of a citizen of the United States at the time of the citizen's death, if the citizen died as a direct result of a specified terrorist activity, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

(B) **PETITIONS.**—An alien described in subparagraph (A) may file a petition with the Attorney General for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C.

1151(b)(2)(A)(i). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(b) SPOUSES, CHILDREN, UNMARRIED SONS AND DAUGHTERS OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) IN GENERAL.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien before September 11, 2001, shall be considered (if the spouse, child, son, or daughter has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for preference status under such section with the same priority date as that assigned prior to the death described in paragraph (3)(A). No new petition shall be required to be filed. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(2) SELF-PETITIONS.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act may file a petition for such classification with the Attorney General, if the spouse, child, son, or daughter was present in the United States on September 11, 2001. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(3) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day of such death, was lawfully admitted for permanent residence in the United States.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-BASED IMMIGRANTS.—

(1) IN GENERAL.—Any alien who was, on September 10, 2001, the spouse or child of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in paragraph (2)(A), may have such application adjudicated as if such death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day before such death, was—

(i) an alien lawfully admitted for permanent residence in the United States by reason of having been allotted a visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)); or

(ii) an applicant for adjustment of status to that of an alien described in clause (i), and admissible to the United States for permanent residence.

(d) WAIVER OF PUBLIC CHARGE GROUNDS.—In determining the admissibility of any alien accorded an immigration benefit under this section, the grounds for inadmissibility specified in section

212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) shall not apply.

**SEC. 424. "AGE-OUT" PROTECTION FOR CHILDREN.**

For purposes of the administration of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), in the case of an alien—

(1) whose 21st birthday occurs in September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 90 days after the alien's 21st birthday for purposes of adjudicating such petition or application; and

(2) whose 21st birthday occurs after September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 45 days after the alien's 21st birthday for purposes of adjudicating such petition or application.

**SEC. 425. TEMPORARY ADMINISTRATIVE RELIEF.**

The Attorney General, for humanitarian purposes or to ensure family unity, may provide temporary administrative relief to any alien who—

(1) was lawfully present in the United States on September 10, 2001;

(2) was on such date the spouse, parent, or child of an individual who died or was disabled as a direct result of a specified terrorist activity; and

(3) is not otherwise entitled to relief under any other provision of this subtitle.

**SEC. 426. EVIDENCE OF DEATH, DISABILITY, OR LOSS OF EMPLOYMENT.**

(a) **IN GENERAL.**—The Attorney General shall establish appropriate standards for evidence demonstrating, for purposes of this subtitle, that any of the following occurred as a direct result of a specified terrorist activity:

(1) Death.

(2) Disability.

(3) Loss of employment due to physical damage to, or destruction of, a business.

(b) **WAIVER OF REGULATIONS.**—The Attorney General shall carry out subsection (a) as expeditiously as possible. The Attorney General is not required to promulgate regulations prior to implementing this subtitle.

**SEC. 427. NO BENEFITS TO TERRORISTS OR FAMILY MEMBERS OF TERRORISTS.**

Notwithstanding any other provision of this subtitle, nothing in this subtitle shall be construed to provide any benefit or relief to—

(1) any individual culpable for a specified terrorist activity;

or

(2) any family member of any individual described in paragraph (1).

**SEC. 428. DEFINITIONS.**

(a) **APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.**—Except as otherwise specifically provided in this subtitle,

the definitions used in the Immigration and Nationality Act (excluding the definitions applicable exclusively to title III of such Act) shall apply in the administration of this subtitle.

(b) SPECIFIED TERRORIST ACTIVITY.—For purposes of this subtitle, the term “specified terrorist activity” means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.

## TITLE V—REMOVING OBSTACLES TO INVESTIGATING TERRORISM

### SEC. 501. [18 U.S.C. 3071 note] ATTORNEY GENERAL’S AUTHORITY TO PAY REWARDS TO COMBAT TERRORISM.

(a) PAYMENT OF REWARDS TO COMBAT TERRORISM.—Funds available to the Attorney General may be used for the payment of rewards pursuant to public advertisements for assistance to the Department of Justice to combat terrorism and defend the Nation against terrorist acts, in accordance with procedures and regulations established or issued by the Attorney General.

(b) CONDITIONS.—In making rewards under this section—

(1) no such reward of \$250,000 or more may be made or offered without the personal approval of either the Attorney General or the President;

(2) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under paragraph (1);

(3) any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) may provide the Attorney General with funds for the payment of rewards;

(4) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review; and

(5) no such reward shall be subject to any per- or aggregate reward spending limitation established by law, unless that law expressly refers to this section, and no reward paid pursuant to any such offer shall count toward any such aggregate reward spending limitation.

### SEC. 502. SECRETARY OF STATE’S AUTHORITY TO PAY REWARDS.

Section 36 of the State Department Basic Authorities Act of 1956 (Public Law 885, August 1, 1956; 22 U.S.C. 2708) is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking “or” at the end;

(B) in paragraph (5), by striking the period at the end and inserting “, including by dismantling an organization in whole or significant part; or”; and

(C) by adding at the end the following:

“(6) the identification or location of an individual who holds a key leadership position in a terrorist organization.”;

(2) in subsection (d), by striking paragraphs (2) and (3) and redesignating paragraph (4) as paragraph (2); and

(3) in subsection (e)(1), by inserting “, except as personally authorized by the Secretary of State if he determines that offer or payment of an award of a larger amount is necessary to combat terrorism or defend the Nation against terrorist acts.” after “\$5,000,000”.

**SEC. 503. DNA IDENTIFICATION OF TERRORISTS AND OTHER VIOLENT OFFENDERS.**

Section 3(d)(2) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)(2)) is amended to read as follows:

“(2) In addition to the offenses described in paragraph (1), the following offenses shall be treated for purposes of this section as qualifying Federal offenses, as determined by the Attorney General:

“(A) Any offense listed in section 2332b(g)(5)(B) of title 18, United States Code.

“(B) Any crime of violence (as defined in section 16 of title 18, United States Code).

“(C) Any attempt or conspiracy to commit any of the above offenses.”.

**SEC. 504. COORDINATION WITH LAW ENFORCEMENT.**

(a) INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.—Section 106 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806), is amended by adding at the end the following:

“(k)(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this title may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against—

“(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

“(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

“(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

“(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 104(a)(7)(B) or the entry of an order under section 105.”.

(b) INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.—Section 305 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by adding at the end the following:

“(k)(1) Federal officers who conduct physical searches to acquire foreign intelligence information under this title may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against—

“(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

“(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

“(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

“(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 303(a)(7) or the entry of an order under section 304.”.

**SEC. 505. MISCELLANEOUS NATIONAL SECURITY AUTHORITIES.**

(a) TELEPHONE TOLL AND TRANSACTIONAL RECORDS.—Section 2709(b) of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by inserting “at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director” after “Assistant Director”;

(2) in paragraph (1)—

(A) by striking “in a position not lower than Deputy Assistant Director”; and

(B) by striking “made that” and all that follows and inserting the following: “made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and”; and

(3) in paragraph (2)—

(A) by striking “in a position not lower than Deputy Assistant Director”; and

(B) by striking “made that” and all that follows and inserting the following: “made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.”.

(b) FINANCIAL RECORDS.—Section 1114(a)(5)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(A)) is amended—

(1) by inserting “in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director” after “designee”; and

(2) by striking “sought” and all that follows and inserting “sought for foreign counter intelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.”.

(c) CONSUMER REPORTS.—Section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended—

(1) in subsection (a)—

(A) by inserting “in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director” after “designee” the first place it appears; and

(B) by striking “in writing that” and all that follows through the end and inserting the following: “in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.”; (2) in subsection (b)—

(A) by inserting “in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director” after “designee” the first place it appears; and

(B) by striking “in writing that” and all that follows through the end and inserting the following: “in writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.”; and

(3) in subsection (c)—

(A) by inserting “in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director” after “designee of the Director”; and

(B) by striking “in camera that” and all that follows through “States.” and inserting the following: “in camera that the consumer report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.”.

**SEC. 506. EXTENSION OF SECRET SERVICE JURISDICTION.**

(a) CONCURRENT JURISDICTION UNDER 18 U.S.C. 1030.—Section 1030(d) of title 18, United States Code, is amended to read as follows:

“(d)(1) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section.

“(2) The Federal Bureau of Investigation shall have primary authority to investigate offenses under subsection (a)(1) for any cases involving espionage, foreign counterintelligence, information protected against unauthorized disclosure for reasons of national defense or foreign relations, or Restricted Data (as that term is defined in section 11y of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)), except for offenses affecting the duties of the United States Secret Service pursuant to section 3056(a) of this title.

“(3) Such authority shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.”.

(b) REAUTHORIZATION OF JURISDICTION UNDER 18 U.S.C. 1344.—Section 3056(b)(3) of title 18, United States Code, is amended by striking “credit and debit card frauds, and false identification documents or devices” and inserting “access device frauds, false identification documents or devices, and any fraud or other criminal or unlawful activity in or against any federally insured financial institution”.

**SEC. 507. DISCLOSURE OF EDUCATIONAL RECORDS.**

Section 444 of the General Education Provisions Act (20 U.S.C. 1232g), is amended by adding after subsection (i) a new subsection (j) to read as follows:

“(j) INVESTIGATION AND PROSECUTION OF TERRORISM.—

“(1) IN GENERAL.—Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to—

“(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18 United States Code, or an act of domestic or international terrorism as defined in section 2331 of that title; and

“(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

“(2) APPLICATION AND APPROVAL.—

“(A) IN GENERAL.—An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

“(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

“(3) PROTECTION OF EDUCATIONAL AGENCY OR INSTITUTION.—An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

“(4) RECORD-KEEPING.—Subsection (b)(4) does not apply to education records subject to a court order under this subsection.”.

**SEC. 508. DISCLOSURE OF INFORMATION FROM NCES SURVEYS.**

Section 408 of the National Education Statistics Act of 1994 (20 U.S.C. 9007), is amended by adding after subsection (b) a new subsection (c) to read as follows:

“(c) INVESTIGATION AND PROSECUTION OF TERRORISM.—

“(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring the Secretary to permit the Attorney General (or his designee) to—

“(A) collect reports, records, and information (including individually identifiable information) in the possession of the center that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, or an act of domestic or international terrorism as defined in section 2331 of that title; and

“(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such information, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

“(2) APPLICATION AND APPROVAL.—

“(A) IN GENERAL.—An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the information sought is described in paragraph (1)(A).

“(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

“(3) PROTECTION.—An officer or employee of the Department who, in good faith, produces information in accordance with an order issued under this subsection does not violate subsection (b)(2) and shall not be liable to any person for that production.”.

## **TITLE VI—PROVIDING FOR VICTIMS OF TERRORISM, PUBLIC SAFETY OFFICERS, AND THEIR FAMILIES**

### **Subtitle A—Aid to Families of Public Safety Officers**

**SEC. 611. [42 U.S.C. 3796c-1] EXPEDITED PAYMENT FOR PUBLIC SAFETY OFFICERS INVOLVED IN THE PREVENTION, INVESTIGATION, RESCUE, OR RECOVERY EFFORTS RELATED TO A TERRORIST ATTACK.**

(a) IN GENERAL.—Notwithstanding the limitations of subsection (b) of section 1201 or the provisions of subsections (c), (d), and (e) of such section or section 1202 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796, 3796a), upon certification (containing identification of all eligible

payees of benefits pursuant to section 1201 of such Act) by a public agency that a public safety officer employed by such agency was killed or suffered a catastrophic injury producing permanent and total disability as a direct and proximate result of a personal injury sustained in the line of duty as described in section 1201 of such Act in connection with prevention, investigation, rescue, or recovery efforts related to a terrorist attack, the Director of the Bureau of Justice Assistance shall authorize payment to qualified beneficiaries, said payment to be made not later than 30 days after receipt of such certification, benefits described under subpart 1 of part L of such Act (42 U.S.C. 3796 et seq.).

(b) **DEFINITIONS.**—For purposes of this section, the terms “catastrophic injury”, “public agency”, and “public safety officer” have the same meanings given such terms in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b).

**SEC. 612. TECHNICAL CORRECTION WITH RESPECT TO EXPEDITED PAYMENTS FOR HEROIC PUBLIC SAFETY OFFICERS.**

Section 1 of Public Law 107-37 (an Act to provide for the expedited payment of certain benefits for a public safety officer who was killed or suffered a catastrophic injury as a direct and proximate result of a personal injury sustained in the line of duty in connection with the terrorist attacks of September 11, 2001) is amended by—

- (1) inserting before “by a” the following: “(containing identification of all eligible payees of benefits pursuant to section 1201)”;
- (2) inserting “producing permanent and total disability” after “suffered a catastrophic injury”; and
- (3) striking “1201(a)” and inserting “1201”.

**SEC. 613. PUBLIC SAFETY OFFICERS BENEFIT PROGRAM PAYMENT INCREASE.**

(a) **PAYMENTS.**—Section 1201(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by striking “\$100,000” and inserting “\$250,000”.

(b) **[42 U.S.C. 3796 note] APPLICABILITY.**—The amendment made by subsection (a) shall apply to any death or disability occurring on or after January 1, 2001.

**SEC. 614. OFFICE OF JUSTICE PROGRAMS.**

Section 112 of title I of section 101(b) of division A of Public Law 105-277 and section 108(a) of appendix A of Public Law 106-113 (113 Stat. 1501A-20) are amended—

- (1) after “that Office”, each place it occurs, by inserting “(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90-351)”;
- (2) by inserting “functions, including any” after “all”.

## Subtitle B—Amendments to the Victims of Crime Act of 1984

### SEC. 621. CRIME VICTIMS FUND.

(a) DEPOSIT OF GIFTS IN THE FUND.—Section 1402(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(b)) is amended—

- (1) in paragraph (3), by striking “and” at the end;
- (2) in paragraph (4), by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following:  
“(5) any gifts, bequests, or donations to the Fund from private entities or individuals.”.

(b) FORMULA FOR FUND DISTRIBUTIONS.—Section 1402(c) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(c)) is amended to read as follows:

“(c) FUND DISTRIBUTION; RETENTION OF SUMS IN FUND; AVAILABILITY FOR EXPENDITURE WITHOUT FISCAL YEAR LIMITATION.—

“(1) Subject to the availability of money in the Fund, in each fiscal year, beginning with fiscal year 2003, the Director shall distribute not less than 90 percent nor more than 110 percent of the amount distributed from the Fund in the previous fiscal year, except the Director may distribute up to 120 percent of the amount distributed in the previous fiscal year in any fiscal year that the total amount available in the Fund is more than 2 times the amount distributed in the previous fiscal year.

“(2) In each fiscal year, the Director shall distribute amounts from the Fund in accordance with subsection (d). All sums not distributed during a fiscal year shall remain in reserve in the Fund to be distributed during a subsequent fiscal year. Notwithstanding any other provision of law, all sums deposited in the Fund that are not distributed shall remain in reserve in the Fund for obligation in future fiscal years, without fiscal year limitation.”.

(c) ALLOCATION OF FUNDS FOR COSTS AND GRANTS.—Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended—

- (1) by striking “deposited in” and inserting “to be distributed from”;
- (2) in subparagraph (A), by striking “48.5” and inserting “47.5”;
- (3) in subparagraph (B), by striking “48.5” and inserting “47.5”; and
- (4) in subparagraph (C), by striking “3” and inserting “5”.

(d) ANTITERRORISM EMERGENCY RESERVE.—Section 1402(d)(5) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(5)) is amended to read as follows:

“(5)(A) In addition to the amounts distributed under paragraphs (2), (3), and (4), the Director may set aside up to \$50,000,000 from the amounts transferred to the Fund in response to the airplane hijackings and terrorist acts that occurred on September 11, 2001, as an antiterrorism emergency reserve. The Director may replenish any amounts expended from such reserve in subsequent fiscal years by setting aside

up to 5 percent of the amounts remaining in the Fund in any fiscal year after distributing amounts under paragraphs (2), (3) and (4). Such reserve shall not exceed \$50,000,000.

“(B) The antiterrorism emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 1404B and to provide compensation to victims of international terrorism under section 1404C.

“(C) Amounts in the antiterrorism emergency reserve established pursuant to subparagraph (A) may be carried over from fiscal year to fiscal year. Notwithstanding subsection (c) and section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (and any similar limitation on Fund obligations in any future Act, unless the same should expressly refer to this section), any such amounts carried over shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund.”.

(e) [42 U.S.C. 10601 note] VICTIMS OF SEPTEMBER 11, 2001.—Amounts transferred to the Crime Victims Fund for use in responding to the airplane hijackings and terrorist acts (including any related search, rescue, relief, assistance, or other similar activities) that occurred on September 11, 2001, shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund, notwithstanding—

(1) section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, and any similar limitation on Fund obligations in such Act for Fiscal Year 2002; and

(2) subsections (c) and (d) of section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601).

#### **SEC. 622. CRIME VICTIM COMPENSATION.**

(a) ALLOCATION OF FUNDS FOR COMPENSATION AND ASSISTANCE.—Paragraphs (1) and (2) of section 1403(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)) are amended by inserting “in fiscal year 2002 and of 60 percent in subsequent fiscal years” after “40 percent”.

(b) LOCATION OF COMPENSABLE CRIME.—Section 1403(b)(6)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)(6)(B)) is amended by striking “are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or”.

(c) RELATIONSHIP OF CRIME VICTIM COMPENSATION TO MEANS-TESTED FEDERAL BENEFIT PROGRAMS.—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking subsection (c) and inserting the following:

“(c) EXCLUSION FROM INCOME, RESOURCES, AND ASSETS FOR PURPOSES OF MEANS TESTS.—Notwithstanding any other law (other than title IV of Public Law 107–42), for the purpose of any maximum allowed income, resource, or asset eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance), any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income, resources, or assets of the applicant, nor shall

that amount reduce the amount of the assistance available to the applicant from Federal, State, or local government programs using Federal funds, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.”.

(d) DEFINITIONS OF “COMPENSABLE CRIME” AND “STATE”.—Section 1403(d) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)) is amended—

(1) in paragraph (3), by striking “crimes involving terrorism,”; and

(2) in paragraph (4), by inserting “the United States Virgin Islands,” after “the Commonwealth of Puerto Rico,”.

(e) RELATIONSHIP OF ELIGIBLE CRIME VICTIM COMPENSATION PROGRAMS TO THE SEPTEMBER 11TH VICTIM COMPENSATION FUND.—

(1) IN GENERAL.—Section 1403(e) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(e)) is amended by inserting “including the program established under title IV of Public Law 107–42,” after “Federal program,”.

(2) [49 U.S.C. 40101 note] COMPENSATION.—With respect to any compensation payable under title IV of Public Law 107–42, the failure of a crime victim compensation program, after the effective date of final regulations issued pursuant to section 407 of Public Law 107–42, to provide compensation otherwise required pursuant to section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) shall not render that program ineligible for future grants under the Victims of Crime Act of 1984.

#### SEC. 623. CRIME VICTIM ASSISTANCE.

(a) ASSISTANCE FOR VICTIMS IN THE DISTRICT OF COLUMBIA, PUERTO RICO, AND OTHER TERRITORIES AND POSSESSIONS.—Section 1404(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)) is amended by adding at the end the following:

“(6) An agency of the Federal Government performing local law enforcement functions in and on behalf of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any other territory or possession of the United States may qualify as an eligible crime victim assistance program for the purpose of grants under this subsection, or for the purpose of grants under subsection (c)(1).”.

(b) PROHIBITION ON DISCRIMINATION AGAINST CERTAIN VICTIMS.—Section 1404(b)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(b)(1)) is amended—

(1) in subparagraph (D), by striking “and” at the end;

(2) in subparagraph (E), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(F) does not discriminate against victims because they disagree with the way the State is prosecuting the criminal case.”.

(c) GRANTS FOR PROGRAM EVALUATION AND COMPLIANCE EFFORTS.—Section 1404(c)(1)(A) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(1)(A)) is amended by inserting “, program evaluation, compliance efforts,” after “demonstration projects”.

(d) ALLOCATION OF DISCRETIONARY GRANTS.—Section 1404(c)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(2)) is amended—

(1) in subparagraph (A), by striking “not more than” and inserting “not less than”; and

(2) in subparagraph (B), by striking “not less than” and inserting “not more than”.

(e) FELLOWSHIPS AND CLINICAL INTERNSHIPS.—Section 1404(c)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(3)) is amended—

(1) in subparagraph (C), by striking “and” at the end;

(2) in subparagraph (D), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(E) use funds made available to the Director under this subsection—

“(i) for fellowships and clinical internships; and

“(ii) to carry out programs of training and special workshops for the presentation and dissemination of information resulting from demonstrations, surveys, and special projects.”.

#### SEC. 624. VICTIMS OF TERRORISM.

(a) COMPENSATION AND ASSISTANCE TO VICTIMS OF DOMESTIC TERRORISM.—Section 1404B(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(b)) is amended to read as follows:

“(b) VICTIMS OF TERRORISM WITHIN THE UNITED STATES.—The Director may make supplemental grants as provided in section 1402(d)(5) to States for eligible crime victim compensation and assistance programs, and to victim service organizations, public agencies (including Federal, State, or local governments) and non-governmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, compensation, training and technical assistance, and ongoing assistance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring within the United States.”.

(b) ASSISTANCE TO VICTIMS OF INTERNATIONAL TERRORISM.—Section 1404B(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(a)(1)) is amended by striking “who are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986”.

(c) COMPENSATION TO VICTIMS OF INTERNATIONAL TERRORISM.—Section 1404C(b) of the Victims of Crime of 1984 (42 U.S.C. 10603c(b)) is amended by adding at the end the following: “The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.”.

## TITLE VII—INCREASED INFORMATION SHARING FOR CRITICAL INFRASTRUCTURE PROTECTION

### SEC. 701. EXPANSION OF REGIONAL INFORMATION SHARING SYSTEM TO FACILITATE FEDERAL-STATE-LOCAL LAW ENFORCEMENT RESPONSE RELATED TO TERRORIST ATTACKS.

Section 1301 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h) is amended—

(1) in subsection (a), by inserting “and terrorist conspiracies and activities” after “activities”;

(2) in subsection (b)—

(A) in paragraph (3), by striking “and” after the semicolon;

(B) by redesignating paragraph (4) as paragraph (5);

and

(C) by inserting after paragraph (3) the following:

“(4) establishing and operating secure information sharing systems to enhance the investigation and prosecution abilities of participating enforcement agencies in addressing multi-jurisdictional terrorist conspiracies and activities; and (5)”;

(3) by inserting at the end the following:

“(d) AUTHORIZATION OF APPROPRIATION TO THE BUREAU OF JUSTICE ASSISTANCE.—There are authorized to be appropriated to the Bureau of Justice Assistance to carry out this section \$50,000,000 for fiscal year 2002 and \$100,000,000 for fiscal year 2003.”.

## TITLE VIII—STRENGTHENING THE CRIMINAL LAWS AGAINST TERRORISM

### SEC. 801. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST MASS TRANSPORTATION SYSTEMS.

Chapter 97<sup>1</sup> of title 18, United States Code, is amended by adding at the end the following:

#### “§ 1993. Terrorist attacks and other acts of violence against mass transportation systems

“(a) GENERAL PROHIBITIONS.—Whoever willfully—

“(1) wrecks, derails, sets fire to, or disables a mass transportation vehicle or ferry;

“(2) places or causes to be placed any biological agent or toxin for use as a weapon, destructive substance, or destructive device in, upon, or near a mass transportation vehicle or ferry, without previously obtaining the permission of the mass transportation provider, and with intent to endanger the safety of any passenger or employee of the mass transportation provider, or with a reckless disregard for the safety of human life;

“(3) sets fire to, or places any biological agent or toxin for use as a weapon, destructive substance, or destructive device in, upon, or near any garage, terminal, structure, supply, or fa-

<sup>1</sup>Lack of subsection designation and heading so in law. Should probably be “(a) IN GENERAL.—Chapter 97”.

cility used in the operation of, or in support of the operation of, a mass transportation vehicle or ferry, without previously obtaining the permission of the mass transportation provider, and knowing or having reason to know such activity would likely derail, disable, or wreck a mass transportation vehicle or ferry used, operated, or employed by the mass transportation provider;

“(4) removes appurtenances from, damages, or otherwise impairs the operation of a mass transportation signal system, including a train control system, centralized dispatching system, or rail grade crossing warning signal without authorization from the mass transportation provider;

“(5) interferes with, disables, or incapacitates any dispatcher, driver, captain, or person while they are employed in dispatching, operating, or maintaining a mass transportation vehicle or ferry, with intent to endanger the safety of any passenger or employee of the mass transportation provider, or with a reckless disregard for the safety of human life;

“(6) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to an employee or passenger of a mass transportation provider or any other person while any of the foregoing are on the property of a mass transportation provider;

“(7) conveys or causes to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this subsection; or

“(8) attempts, threatens, or conspires to do any of the aforesaid acts,

shall be fined under this title or imprisoned not more than twenty years, or both, if such act is committed, or in the case of a threat or conspiracy such act would be committed, on, against, or affecting a mass transportation provider engaged in or affecting interstate or foreign commerce, or if in the course of committing such act, that person travels or communicates across a State line in order to commit such act, or transports materials across a State line in aid of the commission of such act.

“(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) in a circumstance in which—

“(1) the mass transportation vehicle or ferry was carrying a passenger at the time of the offense; or

“(2) the offense has resulted in the death of any person, shall be guilty of an aggravated form of the offense and shall be fined under this title or imprisoned for a term of years or for life, or both.

“(c) DEFINITIONS.—In this section—

“(1) the term ‘biological agent’ has the meaning given to that term in section 178(1) of this title;

“(2) the term ‘dangerous weapon’ has the meaning given to that term in section 930 of this title;

“(3) the term ‘destructive device’ has the meaning given to that term in section 921(a)(4) of this title;

“(4) the term ‘destructive substance’ has the meaning given to that term in section 31 of this title;

“(5) the term ‘mass transportation’ has the meaning given to that term in section 5302(a)(7) of title 49, United States Code, except that the term shall include schoolbus, charter, and sightseeing transportation;

“(6) the term ‘serious bodily injury’ has the meaning given to that term in section 1365 of this title;

“(7) the term ‘State’ has the meaning given to that term in section 2266 of this title; and

“(8) the term ‘toxin’ has the meaning given to that term in section 178(2) of this title.”

(f)<sup>1</sup> CONFORMING AMENDMENT.—The analysis of chapter 97 of title 18, United States Code, is amended by adding at the end: “1993. Terrorist attacks and other acts of violence against mass transportation systems.”.

**SEC. 802. DEFINITION OF DOMESTIC TERRORISM.**

(a) DOMESTIC TERRORISM DEFINED.—Section 2331 of title 18, United States Code, is amended—

(1) in paragraph (1)(B)(iii), by striking “by assassination or kidnapping” and inserting “by mass destruction, assassination, or kidnapping”;

(2) in paragraph (3), by striking “and”;

(3) in paragraph (4), by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following:

“(5) the term ‘domestic terrorism’ means activities that—  
“(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

“(B) appear to be intended—

“(i) to intimidate or coerce a civilian population;

“(ii) to influence the policy of a government by intimidation or coercion; or

“(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

“(C) occur primarily within the territorial jurisdiction of the United States.”.

(b) CONFORMING AMENDMENT.—Section 3077(1) of title 18, United States Code, is amended to read as follows:

“(1) ‘act of terrorism’ means an act of domestic or international terrorism as defined in section 2331;”.

**SEC. 803. PROHIBITION AGAINST HARBORING TERRORISTS.**

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding after section 2338 the following new section:

**“§ 2339. Harboring or concealing terrorists**

“(a) Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe, has committed, or is about to commit, an offense under section 32 (relating to destruction of aircraft or aircraft facilities), section 175 (relating to biological weapons), section 229 (relating to chemical weapons), section 831 (relating to nuclear materials), paragraph (2) or (3) of section 844(f) (relating to arson and bombing of government property risking or

<sup>1</sup> Subsection designation so in law. Should probably be “(b)”.

causing injury or death), section 1366(a) (relating to the destruction of an energy facility), section 2280 (relating to violence against maritime navigation), section 2332a (relating to weapons of mass destruction), or section 2332b (relating to acts of terrorism transcending national boundaries) of this title, section 236(a) (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)), or section 46502 (relating to aircraft piracy) of title 49, shall be fined under this title or imprisoned not more than ten years, or both.”<sup>1</sup>

“(b) A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.”

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 113B of title 18, United States Code, is amended by inserting after the item for section 2338 the following:

“2339. Harboring or concealing terrorists.”

**SEC. 804. JURISDICTION OVER CRIMES COMMITTED AT U.S. FACILITIES ABROAD.**

Section 7 of title 18, United States Code, is amended by adding at the end the following:

“(9) With respect to offenses committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act—

“(A) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and

“(B) residences in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.

Nothing in this paragraph shall be deemed to supersede any treaty or international agreement with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title.”

**SEC. 805. MATERIAL SUPPORT FOR TERRORISM.**

(a) IN GENERAL.—Section 2339A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “, within the United States,”;

(B) by inserting “229,” after “175,”;

(C) by inserting “1993,” after “1992,”;

(D) by inserting “, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284),” after “of this title”;

(E) by inserting “or 60123(b)” after “46502”; and

(F) by inserting at the end the following: “A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or

<sup>1</sup> So in law.

in any other Federal judicial district as provided by law.”; and

(2) in subsection (b)—

(A) by striking “or other financial securities” and inserting “or monetary instruments or financial securities”; and

(B) by inserting “expert advice or assistance,” after “training”.

(b) TECHNICAL AMENDMENT.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting “or 2339B” after “2339A”.

**SEC. 806. ASSETS OF TERRORIST ORGANIZATIONS.**

Section 981(a)(1) of title 18, United States Code, is amended by inserting at the end the following:

“(G) All assets, foreign or domestic—

“(i) of any individual, entity, or organization engaged in planning or perpetrating any act of domestic or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

“(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing an act of domestic or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

“(iii) derived from, involved in, or used or intended to be used to commit any act of domestic or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property.”.

**SEC. 807. [22 U.S.C. 7211] TECHNICAL CLARIFICATION RELATING TO PROVISION OF MATERIAL SUPPORT TO TERRORISM.**

No provision of the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX of Public Law 106–387) shall be construed to limit or otherwise affect section 2339A or 2339B of title 18, United States Code.

**SEC. 808. DEFINITION OF FEDERAL CRIME OF TERRORISM.**

Section 2332b of title 18, United States Code, is amended—

(1) in subsection (f), by inserting “and any violation of section 351(e), 844(e), 844(f)(1), 956(b), 1361, 1366(b), 1366(c), 1751(e), 2152, or 2156 of this title,” before “and the Secretary”; and

(2) in subsection (g)(5)(B), by striking clauses (i) through (iii) and inserting the following:

“(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 or 175b (relating to biological weapons), 229 (relating to chemical weapons), subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court

assassination and kidnaping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death), 844(i) (relating to arson and bombing of property used in interstate commerce), 930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon), 956(a)(1) (relating to conspiracy to murder, kidnap, or maim persons abroad), 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) (relating to protection of computers), 1114 (relating to killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems), 2155 (relating to destruction of national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339 (relating to harboring terrorists), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title;

“(ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or

“(iii) section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved (relating to application of certain criminal laws to acts on aircraft), or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.”.

**SEC. 809. NO STATUTE OF LIMITATION FOR CERTAIN TERRORISM OFFENSES.**

(a) IN GENERAL.—Section 3286 of title 18, United States Code, is amended to read as follows:

**“§ 3286. Extension of statute of limitation for certain terrorism offenses**

“(a) EIGHT-YEAR LIMITATION.—Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any noncapital offense involving a violation of any provision listed in section 2332b(g)(5)(B), or a violation of section 112, 351(e), 1361, or 1751(e) of this title, or section 46504, 46505, or 46506 of title 49, unless the indictment is found or the information is instituted within 8 years after the offense was committed. Notwithstanding the preceding sentence, offenses listed in section 3295 are subject to the statute of limitations set forth in that section.

“(b) NO LIMITATION.—Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense listed in section 2332b(g)(5)(B), if the commission of such offense resulted in, or created a foreseeable risk of, death or serious bodily injury to another person.”.

(b) [18 U.S.C. 3286 note] APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section.

**SEC. 810. ALTERNATE MAXIMUM PENALTIES FOR TERRORISM OFFENSES.**

(a) ARSON.—Section 81 of title 18, United States Code, is amended in the second undesignated paragraph by striking “not more than twenty years” and inserting “for any term of years or for life”.

(b) DESTRUCTION OF AN ENERGY FACILITY.—Section 1366 of title 18, United States Code, is amended—

(1) in subsection (a), by striking “ten” and inserting “20”;

and

(2) by adding at the end the following:

“(d) Whoever is convicted of a violation of subsection (a) or (b) that has resulted in the death of any person shall be subject to imprisonment for any term of years or life.”.

(c) MATERIAL SUPPORT TO TERRORISTS.—Section 2339A(a) of title 18, United States Code, is amended—

(1) by striking “10” and inserting “15”; and

(2) by striking the period and inserting “, and, if the death of any person results, shall be imprisoned for any term of years or for life.”.

(d) MATERIAL SUPPORT TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS.—Section 2339B(a)(1) of title 18, United States Code, is amended—

(1) by striking “10” and inserting “15”; and

(2) by striking the period after “or both” and inserting “, and, if the death of any person results, shall be imprisoned for any term of years or for life.”.

(e) DESTRUCTION OF NATIONAL-DEFENSE MATERIALS.—Section 2155(a) of title 18, United States Code, is amended—

- (1) by striking “ten” and inserting “20”; and
  - (2) by striking the period at the end and inserting “, and, if death results to any person, shall be imprisoned for any term of years or for life.”.
- (f) SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), is amended—
- (1) by striking “ten” each place it appears and inserting “20”;
  - (2) in subsection (a), by striking the period at the end and inserting “, and, if death results to any person, shall be imprisoned for any term of years or for life.”; and
  - (3) in subsection (b), by striking the period at the end and inserting “, and, if death results to any person, shall be imprisoned for any term of years or for life.”.
- (g) SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES.—Section 46505(c) of title 49, United States Code, is amended—
- (1) by striking “15” and inserting “20”; and
  - (2) by striking the period at the end and inserting “, and, if death results to any person, shall be imprisoned for any term of years or for life.”.
- (h) DAMAGING OR DESTROYING AN INTERSTATE GAS OR HAZARDOUS LIQUID PIPELINE FACILITY.—Section 60123(b) of title 49, United States Code, is amended—
- (1) by striking “15” and inserting “20”; and
  - (2) by striking the period at the end and inserting “, and, if death results to any person, shall be imprisoned for any term of years or for life.”.
- SEC. 811. PENALTIES FOR TERRORIST CONSPIRACIES.**
- (a) ARSON.—Section 81 of title 18, United States Code, is amended in the first undesignated paragraph—
- (1) by striking “, or attempts to set fire to or burn”; and
  - (2) by inserting “or attempts or conspires to do such an act,” before “shall be imprisoned”.
- (b) KILLINGS IN FEDERAL FACILITIES.—Section 930(c) of title 18, United States Code, is amended—
- (1) by striking “or attempts to kill”;
  - (2) by inserting “or attempts or conspires to do such an act,” before “shall be punished”; and
  - (3) by striking “and 1113” and inserting “1113, and 1117”.
- (c) COMMUNICATIONS LINES, STATIONS, OR SYSTEMS.—Section 1362 of title 18, United States Code, is amended in the first undesignated paragraph—
- (1) by striking “or attempts willfully or maliciously to injure or destroy”; and
  - (2) by inserting “or attempts or conspires to do such an act,” before “shall be fined”.
- (d) BUILDINGS OR PROPERTY WITHIN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.—Section 1363 of title 18, United States Code, is amended—
- (1) by striking “or attempts to destroy or injure”; and
  - (2) by inserting “or attempts or conspires to do such an act,” before “shall be fined” the first place it appears.
- (e) WRECKING TRAINS.—Section 1992 of title 18, United States Code, is amended by adding at the end the following:

“(c) A person who conspires to commit any offense defined in this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.”.

(f) MATERIAL SUPPORT TO TERRORISTS.—Section 2339A of title 18, United States Code, is amended by inserting “or attempts or conspires to do such an act,” before “shall be fined”.

(g) TORTURE.—Section 2340A of title 18, United States Code, is amended by adding at the end the following:

“(c) CONSPIRACY.—A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.”.

(h) SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), is amended—

(1) in subsection (a)—

(A) by striking “, or who intentionally and willfully attempts to destroy or cause physical damage to”;

(B) in paragraph (4), by striking the period at the end and inserting a comma; and

(C) by inserting “or attempts or conspires to do such an act,” before “shall be fined”; and

(2) in subsection (b)—

(A) by striking “or attempts to cause”; and

(B) by inserting “or attempts or conspires to do such an act,” before “shall be fined”.

(i) INTERFERENCE WITH FLIGHT CREW MEMBERS AND ATTENDANTS.—Section 46504 of title 49, United States Code, is amended by inserting “or attempts or conspires to do such an act,” before “shall be fined”.

(j) SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES.—Section 46505 of title 49, United States Code, is amended by adding at the end the following:

“(e) CONSPIRACY.—If two or more persons conspire to violate subsection (b) or (c), and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in such subsection.”.

(k) DAMAGING OR DESTROYING AN INTERSTATE GAS OR HAZARDOUS LIQUID PIPELINE FACILITY.—Section 60123(b) of title 49, United States Code, is amended—

(1) by striking “, or attempting to damage or destroy,”; and

(2) by inserting “, or attempting or conspiring to do such an act,” before “shall be fined”.

**SEC. 812. POST-RELEASE SUPERVISION OF TERRORISTS.**

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

“(j) SUPERVISED RELEASE TERMS FOR TERRORISM PREDICATES.—Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in section 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person, is any term of years or life.”.

**SEC. 813. INCLUSION OF ACTS OF TERRORISM AS RACKETEERING ACTIVITY.**

Section 1961(1) of title 18, United States Code, is amended—

- (1) by striking “or (F)” and inserting “(F)”; and
- (2) by inserting before the semicolon at the end the following: “, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B)”.

**SEC. 814. DETERRENCE AND PREVENTION OF CYBERTERRORISM.**

(a) CLARIFICATION OF PROTECTION OF PROTECTED COMPUTERS.—Section 1030(a)(5) of title 18, United States Code, is amended—

- (1) by inserting “(i)” after “(A)”;
- (2) by redesignating subparagraphs (B) and (C) as clauses (ii) and (iii), respectively;
- (3) by adding “and” at the end of clause (iii), as so redesignated; and

(4) by adding at the end the following:  
“(B) by conduct described in clause (i), (ii), or (iii) of subparagraph (A), caused (or, in the case of an attempted offense, would, if completed, have caused)—

“(i) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;

“(ii) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

“(iii) physical injury to any person;

“(iv) a threat to public health or safety; or

“(v) damage affecting a computer system used by or for a government entity in furtherance of the administration of justice, national defense, or national security;”.

(b) PROTECTION FROM EXTORTION.—Section 1030(a)(7) of title 18, United States Code, is amended by striking “, firm, association, educational institution, financial institution, government entity, or other legal entity,”.

(c) PENALTIES.—Section 1030(c) of title 18, United States Code, is amended—

- (1) in paragraph (2)—
  - (A) in subparagraph (A) —
    - (i) by inserting “except as provided in subparagraph (B),” before “a fine”;
    - (ii) by striking “(a)(5)(C)” and inserting “(a)(5)(A)(iii)”;
    - (iii) by striking “and” at the end;
  - (B) in subparagraph (B), by inserting “or an attempt to commit an offense punishable under this subparagraph,” after “subsection (a)(2),” in the matter preceding clause (i); and
  - (C) in subparagraph (C), by striking “and” at the end;
- (2) in paragraph (3)—

(A) by striking “, (a)(5)(A), (a)(5)(B),” both places it appears; and

(B) by striking “(a)(5)(C)” and inserting “(a)(5)(A)(iii);” and

(3) by adding at the end the following:

“(4)(A) a fine under this title, imprisonment for not more than 10 years, or both, in the case of an offense under subsection (a)(5)(A)(i), or an attempt to commit an offense punishable under that subsection;

“(B) a fine under this title, imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(5)(A)(ii), or an attempt to commit an offense punishable under that subsection;

“(C) a fine under this title, imprisonment for not more than 20 years, or both, in the case of an offense under subsection (a)(5)(A)(i) or (a)(5)(A)(ii), or an attempt to commit an offense punishable under either subsection, that occurs after a conviction for another offense under this section.”.

(d) DEFINITIONS.—Section 1030(e) of title 18, United States Code is amended—

(1) in paragraph (2)(B), by inserting “, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States” before the semicolon;

(2) in paragraph (7), by striking “and” at the end;

(3) by striking paragraph (8) and inserting the following:

“(8) the term ‘damage’ means any impairment to the integrity or availability of data, a program, a system, or information;”;

(4) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(5) by adding at the end the following:

“(10) the term ‘conviction’ shall include a conviction under the law of any State for a crime punishable by imprisonment for more than 1 year, an element of which is unauthorized access, or exceeding authorized access, to a computer;

“(11) the term ‘loss’ means any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service; and

“(12) the term ‘person’ means any individual, firm, corporation, educational institution, financial institution, governmental entity, or legal or other entity.”.

(e) DAMAGES IN CIVIL ACTIONS.—Section 1030(g) of title 18, United States Code is amended—

(1) by striking the second sentence and inserting the following: “A civil action for a violation of this section may be brought only if the conduct involves 1 of the factors set forth in clause (i), (ii), (iii), (iv), or (v) of subsection (a)(5)(B). Damages for a violation involving only conduct described in subsection (a)(5)(B)(i) are limited to economic damages.”; and

(2) by adding at the end the following: “No action may be brought under this subsection for the negligent design or man-

ufacture of computer hardware, computer software, or firmware.”.

(f) AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER FRAUD AND ABUSE.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to ensure that any individual convicted of a violation of section 1030 of title 18, United States Code, can be subjected to appropriate penalties, without regard to any mandatory minimum term of imprisonment.

**SEC. 815. [28 U.S.C. 994 note] ADDITIONAL DEFENSE TO CIVIL ACTIONS RELATING TO PRESERVING RECORDS IN RESPONSE TO GOVERNMENT REQUESTS.**

Section 2707(e)(1) of title 18, United States Code, is amended by inserting after “or statutory authorization” the following: “(including a request of a governmental entity under section 2703(f) of this title)”.

**SEC. 816. [28 U.S.C. 509 note] DEVELOPMENT AND SUPPORT OF CYBERSECURITY FORENSIC CAPABILITIES.**

(a) IN GENERAL.—The Attorney General shall establish such regional computer forensic laboratories as the Attorney General considers appropriate, and provide support to existing computer forensic laboratories, in order that all such computer forensic laboratories have the capability—

(1) to provide forensic examinations with respect to seized or intercepted computer evidence relating to criminal activity (including cyberterrorism);

(2) to provide training and education for Federal, State, and local law enforcement personnel and prosecutors regarding investigations, forensic analyses, and prosecutions of computer-related crime (including cyberterrorism);

(3) to assist Federal, State, and local law enforcement in enforcing Federal, State, and local criminal laws relating to computer-related crime;

(4) to facilitate and promote the sharing of Federal law enforcement expertise and information about the investigation, analysis, and prosecution of computer-related crime with State and local law enforcement personnel and prosecutors, including the use of multijurisdictional task forces; and

(5) to carry out such other activities as the Attorney General considers appropriate.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) AUTHORIZATION.—There is hereby authorized to be appropriated in each fiscal year \$50,000,000 for purposes of carrying out this section.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.

**SEC. 817. EXPANSION OF THE BIOLOGICAL WEAPONS STATUTE.**

Chapter 10 of title 18, United States Code, is amended—

(1) in section 175—

(A) in subsection (b)—

(i) by striking “does not include” and inserting “includes”;

(ii) by inserting “other than” after “system for”;  
and

(iii) by inserting “bona fide research” after “protective”;

(B) by redesignating subsection (b) as subsection (c);  
and

(C) by inserting after subsection (a) the following:

“(b) **ADDITIONAL OFFENSE.**—Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both. In this subsection, the terms ‘biological agent’ and ‘toxin’ do not encompass any biological agent or toxin that is in its naturally occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.”;

(2) by inserting after section 175a the following:

“**SEC. 175b. POSSESSION BY RESTRICTED PERSONS.**

“(a) No restricted person described in subsection (b) shall ship or transport interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(l) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or appendix A of part 72 of the Code of Regulations.

“(b) In this section:

“(1) The term ‘select agent’ does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

“(2) The term ‘restricted person’ means an individual who—

“(A) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

“(B) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

“(C) is a fugitive from justice;

“(D) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

“(E) is an alien illegally or unlawfully in the United States;

“(F) has been adjudicated as a mental defective or has been committed to any mental institution;

“(G) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C.

2780(d)), has made a determination (that remains in effect) that such country has repeatedly provided support for acts of international terrorism; or

“(H) has been discharged from the Armed Services of the United States under dishonorable conditions.

“(3) The term ‘alien’ has the same meaning as in section 1010(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

“(4) The term ‘lawfully admitted for permanent residence’ has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

“(c) Whoever knowingly violates this section shall be fined as provided in this title, imprisoned not more than 10 years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized United States governmental activity.”; and

(3) in the chapter analysis, by inserting after the item relating to section 175a the following:

“175b. Possession by restricted persons.”.

## TITLE IX—IMPROVED INTELLIGENCE

### SEC. 901. RESPONSIBILITIES OF DIRECTOR OF CENTRAL INTELLIGENCE REGARDING FOREIGN INTELLIGENCE COLLECTED UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

Section 103(c) of the National Security Act of 1947 (50 U.S.C. 403–3(c)) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) by inserting after paragraph (5) the following new paragraph (6):

“(6) establish requirements and priorities for foreign intelligence information to be collected under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), and provide assistance to the Attorney General to ensure that information derived from electronic surveillance or physical searches under that Act is disseminated so it may be used efficiently and effectively for foreign intelligence purposes, except that the Director shall have no authority to direct, manage, or undertake electronic surveillance or physical search operations pursuant to that Act unless otherwise authorized by statute or Executive order.”.

### SEC. 902. INCLUSION OF INTERNATIONAL TERRORIST ACTIVITIES WITHIN SCOPE OF FOREIGN INTELLIGENCE UNDER NATIONAL SECURITY ACT OF 1947.

Section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended—

(1) in paragraph (2), by inserting before the period the following: “, or international terrorist activities”; and

(2) in paragraph (3), by striking “and activities conducted” and inserting “, and activities conducted,”.

**SEC. 903. SENSE OF CONGRESS ON THE ESTABLISHMENT AND MAINTENANCE OF INTELLIGENCE RELATIONSHIPS TO ACQUIRE INFORMATION ON TERRORISTS AND TERRORIST ORGANIZATIONS.**

It is the sense of Congress that officers and employees of the intelligence community of the Federal Government, acting within the course of their official duties, should be encouraged, and should make every effort, to establish and maintain intelligence relationships with any person, entity, or group for the purpose of engaging in lawful intelligence activities, including the acquisition of information on the identity, location, finances, affiliations, capabilities, plans, or intentions of a terrorist or terrorist organization, or information on any other person, entity, or group (including a foreign government) engaged in harboring, comforting, financing, aiding, or assisting a terrorist or terrorist organization.

**SEC. 904. TEMPORARY AUTHORITY TO DEFER SUBMITTAL TO CONGRESS OF REPORTS ON INTELLIGENCE AND INTELLIGENCE-RELATED MATTERS.**

(a) **AUTHORITY TO DEFER.**—The Secretary of Defense, Attorney General, and Director of Central Intelligence each may, during the effective period of this section, defer the date of submittal to Congress of any covered intelligence report under the jurisdiction of such official until February 1, 2002.

(b) **COVERED INTELLIGENCE REPORT.**—Except as provided in subsection (c), for purposes of subsection (a), a covered intelligence report is as follows:

(1) Any report on intelligence or intelligence-related activities of the United States Government that is required to be submitted to Congress by an element of the intelligence community during the effective period of this section.

(2) Any report or other matter that is required to be submitted to the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives by the Department of Defense or the Department of Justice during the effective period of this section.

(c) **EXCEPTION FOR CERTAIN REPORTS.**—For purposes of subsection (a), any report required by section 502 or 503 of the National Security Act of 1947 (50 U.S.C. 413a, 413b) is not a covered intelligence report.

(d) **NOTICE TO CONGRESS.**—Upon deferring the date of submittal to Congress of a covered intelligence report under subsection (a), the official deferring the date of submittal of the covered intelligence report shall submit to Congress notice of the deferral. Notice of deferral of a report shall specify the provision of law, if any, under which the report would otherwise be submitted to Congress.

(e) **EXTENSION OF DEFERRAL.**—(1) Each official specified in subsection (a) may defer the date of submittal to Congress of a covered intelligence report under the jurisdiction of such official to a date after February 1, 2002, if such official submits to the committees of Congress specified in subsection (b)(2) before February 1, 2002, a certification that preparation and submittal of the covered intelligence report on February 1, 2002, will impede the work of officers or employees who are engaged in counterterrorism activities.

(2) A certification under paragraph (1) with respect to a covered intelligence report shall specify the date on which the covered intelligence report will be submitted to Congress.

(f) **EFFECTIVE PERIOD.**—The effective period of this section is the period beginning on the date of the enactment of this Act and ending on February 1, 2002.

(g) **ELEMENT OF THE INTELLIGENCE COMMUNITY DEFINED.**—In this section, the term “element of the intelligence community” means any element of the intelligence community specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

**SEC. 905. DISCLOSURE TO DIRECTOR OF CENTRAL INTELLIGENCE OF FOREIGN INTELLIGENCE-RELATED INFORMATION WITH RESPECT TO CRIMINAL INVESTIGATIONS.**

(a) **IN GENERAL.**—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended—

- (1) by redesignating subsection 105B as section 105C; and
- (2) by inserting after section 105A the following new section 105B:

“DISCLOSURE OF FOREIGN INTELLIGENCE ACQUIRED IN CRIMINAL INVESTIGATIONS; NOTICE OF CRIMINAL INVESTIGATIONS OF FOREIGN INTELLIGENCE SOURCES

“SEC. 105B. (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 Central 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 of Central Intelligence 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 the date of enactment of this section, the Attorney General, in consultation with the Director of Central 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 of Central Intelligence, 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) and the provision of notice with respect to criminal investigations under subsection (b).”

(b) CLERICAL AMENDMENT.—The table of contents in the first section of that Act is amended by striking the item relating to section 105B and inserting the following new items:

“Sec. 105B. Disclosure of foreign intelligence acquired in criminal investigations; notice of criminal investigations of foreign intelligence sources.

“Sec. 105C. Protection of the operational files of the National Imagery and Mapping Agency.”.

**SEC. 906. FOREIGN TERRORIST ASSET TRACKING CENTER.**

(a) REPORT ON RECONFIGURATION.—Not later than February 1, 2002, the Attorney General, the Director of Central Intelligence, and the Secretary of the Treasury shall jointly submit to Congress a report on the feasibility and desirability of reconfiguring the Foreign Terrorist Asset Tracking Center and the Office of Foreign Assets Control of the Department of the Treasury in order to establish a capability to provide for the effective and efficient analysis and dissemination of foreign intelligence relating to the financial capabilities and resources of international terrorist organizations.

(b) REPORT REQUIREMENTS.—(1) In preparing the report under subsection (a), the Attorney General, the Secretary, and the Director shall consider whether, and to what extent, the capacities and resources of the Financial Crimes Enforcement Center of the Department of the Treasury may be integrated into the capability contemplated by the report.

(2) If the Attorney General, Secretary, and the Director determine that it is feasible and desirable to undertake the reconfiguration described in subsection (a) in order to establish the capability described in that subsection, the Attorney General, the Secretary, and the Director shall include with the report under that subsection a detailed proposal for legislation to achieve the reconfiguration.

**SEC. 907. NATIONAL VIRTUAL TRANSLATION CENTER.**

(a) REPORT ON ESTABLISHMENT.—(1) Not later than February 1, 2002, the Director of Central Intelligence shall, in consultation with the Director of the Federal Bureau of Investigation, submit to the appropriate committees of Congress a report on the establishment and maintenance within the intelligence community of an element for purposes of providing timely and accurate translations of foreign intelligence for all other elements of the intelligence community. In the report, the element shall be referred to as the “National Virtual Translation Center”.

(2) The report on the element described in paragraph (1) shall discuss the use of state-of-the-art communications technology, the integration of existing translation capabilities in the intelligence community, and the utilization of remote-connection capacities so as to minimize the need for a central physical facility for the element.

(b) RESOURCES.—The report on the element required by subsection (a) shall address the following:

(1) The assignment to the element of a staff of individuals possessing a broad range of linguistic and translation skills appropriate for the purposes of the element.

(2) The provision to the element of communications capabilities and systems that are commensurate with the most current and sophisticated communications capabilities and systems available to other elements of intelligence community.

(3) The assurance, to the maximum extent practicable, that the communications capabilities and systems provided to the element will be compatible with communications capabilities and systems utilized by the Federal Bureau of Investigation in securing timely and accurate translations of foreign language materials for law enforcement investigations.

(4) The development of a communications infrastructure to ensure the efficient and secure use of the translation capabilities of the element.

(c) **SECURE COMMUNICATIONS.**—The report shall include a discussion of the creation of secure electronic communications between the element described by subsection (a) and the other elements of the intelligence community.

(d) **DEFINITIONS.**—In this section:

(1) **FOREIGN INTELLIGENCE.**—The term “foreign intelligence” has the meaning given that term in section 3(2) of the National Security Act of 1947 (50 U.S.C. 401a(2)).

(2) **ELEMENT OF THE INTELLIGENCE COMMUNITY.**—The term “element of the intelligence community” means any element of the intelligence community specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

**SEC. 908. [28 U.S.C. 509 note] TRAINING OF GOVERNMENT OFFICIALS REGARDING IDENTIFICATION AND USE OF FOREIGN INTELLIGENCE.**

(a) **PROGRAM REQUIRED.**—The Attorney General shall, in consultation with the Director of Central Intelligence, carry out a program to provide appropriate training to officials described in subsection (b) in order to assist such officials in—

(1) identifying foreign intelligence information in the course of their duties; and

(2) utilizing foreign intelligence information in the course of their duties, to the extent that the utilization of such information is appropriate for such duties.

(b) **OFFICIALS.**—The officials provided training under subsection (a) are, at the discretion of the Attorney General and the Director, the following:

(1) Officials of the Federal Government who are not ordinarily engaged in the collection, dissemination, and use of foreign intelligence in the performance of their duties.

(2) Officials of State and local governments who encounter, or may encounter in the course of a terrorist event, foreign intelligence in the performance of their duties.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is hereby authorized to be appropriated for the Department of Justice such sums as may be necessary for purposes of carrying out the program required by subsection (a).

## **TITLE X—MISCELLANEOUS**

**SEC. 1001. [5 U.S.C. App.] REVIEW OF THE DEPARTMENT OF JUSTICE.**

The Inspector General of the Department of Justice shall designate one official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice;

(2) make public through the Internet, radio, television, and newspaper advertisements information on the responsibilities and functions of, and how to contact, the official; and

(3) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including a description of the use of funds appropriations used to carry out this subsection.

**SEC. 1002. SENSE OF CONGRESS.**

(a) FINDINGS.—Congress finds that—

(1) all Americans are united in condemning, in the strongest possible terms, the terrorists who planned and carried out the attacks against the United States on September 11, 2001, and in pursuing all those responsible for those attacks and their sponsors until they are brought to justice;

(2) Sikh-Americans form a vibrant, peaceful, and law-abiding part of America's people;

(3) approximately 500,000 Sikhs reside in the United States and are a vital part of the Nation;

(4) Sikh-Americans stand resolutely in support of the commitment of our Government to bring the terrorists and those that harbor them to justice;

(5) the Sikh faith is a distinct religion with a distinct religious and ethnic identity that has its own places of worship and a distinct holy text and religious tenets;

(6) many Sikh-Americans, who are easily recognizable by their turbans and beards, which are required articles of their faith, have suffered both verbal and physical assaults as a result of misguided anger toward Arab-Americans and Muslim-Americans in the wake of the September 11, 2001 terrorist attack;

(7) Sikh-Americans, as do all Americans, condemn acts of prejudice against any American; and

(8) Congress is seriously concerned by the number of crimes against Sikh-Americans and other Americans all across the Nation that have been reported in the wake of the tragic events that unfolded on September 11, 2001.

(b) SENSE OF CONGRESS.—Congress—

(1) declares that, in the quest to identify, locate, and bring to justice the perpetrators and sponsors of the terrorist attacks on the United States on September 11, 2001, the civil rights and civil liberties of all Americans, including Sikh-Americans, should be protected;

(2) condemns bigotry and any acts of violence or discrimination against any Americans, including Sikh-Americans;

(3) calls upon local and Federal law enforcement authorities to work to prevent crimes against all Americans, including Sikh-Americans; and

(4) calls upon local and Federal law enforcement authorities to prosecute to the fullest extent of the law all those who commit crimes.

**SEC. 1003. DEFINITION OF “ELECTRONIC SURVEILLANCE”.**

Section 101(f)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)(2)) is amended by adding at the end before the semicolon the following: “, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18, United States Code”.

**SEC. 1004. VENUE IN MONEY LAUNDERING CASES.**

Section 1956 of title 18, United States Code, is amended by adding at the end the following:

“(i) VENUE.—(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—

“(A) any district in which the financial or monetary transaction is conducted; or

“(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

“(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

“(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.”.

**SEC. 1005. [28 U.S.C. 509 note] FIRST RESPONDERS ASSISTANCE ACT.**

(a) GRANT AUTHORIZATION.—The Attorney General shall make grants described in subsections (b) and (c) to States and units of local government to improve the ability of State and local law enforcement, fire department and first responders to respond to and prevent acts of terrorism.

(b) TERRORISM PREVENTION GRANTS.—Terrorism prevention grants under this subsection may be used for programs, projects, and other activities to—

(1) hire additional law enforcement personnel dedicated to intelligence gathering and analysis functions, including the formation of full-time intelligence and analysis units;

(2) purchase technology and equipment for intelligence gathering and analysis functions, including wire-tap, pen links, cameras, and computer hardware and software;

(3) purchase equipment for responding to a critical incident, including protective equipment for patrol officers such as quick masks;

(4) purchase equipment for managing a critical incident, such as communications equipment for improved interoper-

ability among surrounding jurisdictions and mobile command posts for overall scene management; and

(5) fund technical assistance programs that emphasize coordination among neighboring law enforcement agencies for sharing resources, and resources coordination among law enforcement agencies for combining intelligence gathering and analysis functions, and the development of policy, procedures, memorandums of understanding, and other best practices.

(c) ANTITERRORISM TRAINING GRANTS.—Antiterrorism training grants under this subsection may be used for programs, projects, and other activities to address—

- (1) intelligence gathering and analysis techniques;
- (2) community engagement and outreach;
- (3) critical incident management for all forms of terrorist attack;
- (4) threat assessment capabilities;
- (5) conducting followup investigations; and
- (6) stabilizing a community after a terrorist incident.

(d) APPLICATION.—

(1) IN GENERAL.—Each eligible entity that desires to receive a grant under this section shall submit an application to the Attorney General, at such time, in such manner, and accompanied by such additional information as the Attorney General may reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

- (A) describe the activities for which assistance under this section is sought; and
- (B) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements of this section.

(e) MINIMUM AMOUNT.—If all applications submitted by a State or units of local government within that State have not been funded under this section in any fiscal year, that State, if it qualifies, and the units of local government within that State, shall receive in that fiscal year not less than 0.5 percent of the total amount appropriated in that fiscal year for grants under this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$25,000,000 for each of the fiscal years 2003 through 2007.

**SEC. 1006. INADMISSIBILITY OF ALIENS ENGAGED IN MONEY LAUNDERING.**

(a) AMENDMENT TO IMMIGRATION AND NATIONALITY ACT.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

“(I) MONEY LAUNDERING.—Any alien—

“(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18, United States Code (relating to laundering of monetary instruments); or

“(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor,

assister, conspirator, or colluder with others in an offense which is described in such section; is inadmissible.”.

(b) **[8 U.S.C. 1182 note] MONEY LAUNDERING WATCHLIST.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall develop, implement, and certify to the Congress that there has been established a money laundering watchlist, which identifies individuals worldwide who are known or suspected of money laundering, which is readily accessible to, and shall be checked by, a consular or other Federal official prior to the issuance of a visa or admission to the United States. The Secretary of State shall develop and continually update the watchlist in cooperation with the Attorney General, the Secretary of the Treasury, and the Director of Central Intelligence.

**SEC. 1007. AUTHORIZATION OF FUNDS FOR DEA POLICE TRAINING IN SOUTH AND CENTRAL ASIA.**

In addition to amounts otherwise available to carry out section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291), there is authorized to be appropriated to the President not less than \$5,000,000 for fiscal year 2002 for regional antidrug training in the Republic of Turkey by the Drug Enforcement Administration for police, as well as increased precursor chemical control efforts in the South and Central Asia region.

**SEC. 1008. FEASIBILITY STUDY ON USE OF BIOMETRIC IDENTIFIER SCANNING SYSTEM WITH ACCESS TO THE FBI INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM AT OVERSEAS CONSULAR POSTS AND POINTS OF ENTRY TO THE UNITED STATES.**

(a) **IN GENERAL.**—The Attorney General, in consultation with the Secretary of State and the Secretary of Transportation, shall conduct a study on the feasibility of utilizing a biometric identifier (fingerprint) scanning system, with access to the database of the Federal Bureau of Investigation Integrated Automated Fingerprint Identification System, at consular offices abroad and at points of entry into the United States to enhance the ability of State Department and immigration officials to identify aliens who may be wanted in connection with criminal or terrorist investigations in the United States or abroad prior to the issuance of visas or entry into the United States.

(b) **REPORT TO CONGRESS.**—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall submit a report summarizing the findings of the study authorized under subsection (a) to the Committee on International Relations and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate.

**SEC. 1009. STUDY OF ACCESS.**

(a) **IN GENERAL.**—Not later than 120 days after enactment of this Act, the Federal Bureau of Investigation shall study and report to Congress on the feasibility of providing to airlines access via computer to the names of passengers who are suspected of terrorist activity by Federal officials.

(b) **AUTHORIZATION.**—There are authorized to be appropriated not more than \$250,000 to carry out subsection (a).

**SEC. 1010. [10 U.S.C. 2465 note] TEMPORARY AUTHORITY TO CONTRACT WITH LOCAL AND STATE GOVERNMENTS FOR PERFORMANCE OF SECURITY FUNCTIONS AT UNITED STATES MILITARY INSTALLATIONS.**

(a) **IN GENERAL.**—Notwithstanding section 2465 of title 10, United States Code, during the period of time that United States armed forces are engaged in Operation Enduring Freedom, and for the period of 180 days thereafter, funds appropriated to the Department of Defense may be obligated and expended for the purpose of entering into contracts or other agreements for the performance of security functions at any military installation or facility in the United States with a proximately located local or State government, or combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation.

(b) **TRAINING.**—Any contract or agreement entered into under this section shall prescribe standards for the training and other qualifications of local government law enforcement personnel who perform security functions under this section in accordance with criteria established by the Secretary of the service concerned.

(c) **REPORT.**—One year after the date of enactment of this section, the Secretary of Defense shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives describing the use of the authority granted under this section and the use by the Department of Defense of other means to improve the performance of security functions on military installations and facilities located within the United States.

**SEC. 1011. [15 U.S.C. 6101 note] CRIMES AGAINST CHARITABLE AMERICANS.**

(a) **SHORT TITLE.**—This section may be cited as the “Crimes Against Charitable Americans Act of 2001”.

(b) **TELEMARKETING AND CONSUMER FRAUD ABUSE.**—The Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.) is amended—

(1) in section 3(a)(2), by inserting after “practices” the second place it appears the following: “which shall include fraudulent charitable solicitations, and”;

(2) in section 3(a)(3)—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(D) a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made.”; and

(3) in section 7(4), by inserting “, or a charitable contribution, donation, or gift of money or any other thing of value,” after “services”.

(c) RED CROSS MEMBERS OR AGENTS.—Section 917 of title 18, United States Code, is amended by striking “one year” and inserting “5 years”.

(d) TELEMARKETING FRAUD.—Section 2325(1) of title 18, United States Code, is amended—

- (1) in subparagraph (A), by striking “or” at the end;
- (2) in subparagraph (B), by striking the comma at the end and inserting “; or”;
- (3) by inserting after subparagraph (B) the following:  
“(C) a charitable contribution, donation, or gift of money or any other thing of value.”; and
- (4) in the flush language, by inserting “or charitable contributor, or donor” after “participant”.

**SEC. 1012. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.**

(a) LIMITATION.—

(1) IN GENERAL.—Chapter 51 of title 49, United States Code, is amended by inserting after section 5103 the following new section:

**“§ 5103a. Limitation on issuance of hazmat licenses**

“(a) LIMITATION.—

“(1) ISSUANCE OF LICENSES.—A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.

“(2) RENEWALS INCLUDED.—For the purposes of this section, the term ‘issue’, with respect to a license, includes renewal of the license.

“(b) HAZARDOUS MATERIALS DESCRIBED.—The limitation in subsection (a) shall apply with respect to—

“(1) any material defined as a hazardous material by the Secretary of Transportation; and

“(2) any chemical or biological material or agent determined by the Secretary of Health and Human Services or the Attorney General as being a threat to the national security of the United States.

“(c) BACKGROUND RECORDS CHECK.—

“(1) IN GENERAL.—Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General—

“(A) shall carry out a background records check regarding the individual; and

“(B) upon completing the background records check, shall notify the Secretary of Transportation of the completion and results of the background records check.

“(2) SCOPE.—A background records check regarding an individual under this subsection shall consist of the following:

“(A) A check of the relevant criminal history data bases.

“(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

“(C) As appropriate, a check of the relevant international data bases through Interpol–U.S. National Central Bureau or other appropriate means.

“(d) REPORTING REQUIREMENT.—Each State shall submit to the Secretary of Transportation, at such time and in such manner as the Secretary may prescribe, the name, address, and such other information as the Secretary may require, concerning—

“(1) each alien to whom the State issues a license described in subsection (a); and

“(2) each other individual to whom such a license is issued, as the Secretary may require.

“(e) ALIEN DEFINED.—In this section, the term ‘alien’ has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5103 the following new item:

“5103a. Limitation on issuance of hazmat licenses.”.

(b) REGULATION OF DRIVER FITNESS.—Section 31305(a)(5) of title 49, United States Code, is amended—

(1) by striking “and” at the end of subparagraph (A);

(2) by inserting “and” at the end of subparagraph (B); and

(3) by adding at the end the following new subparagraph:

“(C) is licensed by a State to operate the vehicle after having first been determined under section 5103a of this title as not posing a security risk warranting denial of the license.”.

(c) [49 U.S.C. 5103a note] AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Department of Transportation and the Department of Justice such amounts as may be necessary to carry out section 5103a of title 49, United States Code, as added by subsection (a).

**SEC. 1013. EXPRESSING THE SENSE OF THE SENATE CONCERNING THE PROVISION OF FUNDING FOR BIOTERRORISM PREPAREDNESS AND RESPONSE.**

(a) FINDINGS.—The Senate finds the following:

(1) Additional steps must be taken to better prepare the United States to respond to potential bioterrorism attacks.

(2) The threat of a bioterrorist attack is still remote, but is increasing for a variety of reasons, including—

(A) public pronouncements by Osama bin Laden that it is his religious duty to acquire weapons of mass destruction, including chemical and biological weapons;

(B) the callous disregard for innocent human life as demonstrated by the terrorists’ attacks of September 11, 2001;

(C) the resources and motivation of known terrorists and their sponsors and supporters to use biological warfare;

(D) recent scientific and technological advances in agent delivery technology such as aerosolization that have made weaponization of certain germs much easier; and

(E) the increasing access to the technologies and expertise necessary to construct and deploy chemical and biological weapons of mass destruction.

(3) Coordination of Federal, State, and local terrorism research, preparedness, and response programs must be improved.

(4) States, local areas, and public health officials must have enhanced resources and expertise in order to respond to a potential bioterrorist attack.

(5) National, State, and local communication capacities must be enhanced to combat the spread of chemical and biological illness.

(6) Greater resources must be provided to increase the capacity of hospitals and local health care workers to respond to public health threats.

(7) Health care professionals must be better trained to recognize, diagnose, and treat illnesses arising from biochemical attacks.

(8) Additional supplies may be essential to increase the readiness of the United States to respond to a bio-attack.

(9) Improvements must be made in assuring the safety of the food supply.

(10) New vaccines and treatments are needed to assure that we have an adequate response to a biochemical attack.

(11) Government research, preparedness, and response programs need to utilize private sector expertise and resources.

(12) Now is the time to strengthen our public health system and ensure that the United States is adequately prepared to respond to potential bioterrorist attacks, natural infectious disease outbreaks, and other challenges and potential threats to the public health.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the United States should make a substantial new investment this year toward the following:

(1) Improving State and local preparedness capabilities by upgrading State and local surveillance epidemiology, assisting in the development of response plans, assuring adequate staffing and training of health professionals to diagnose and care for victims of bioterrorism, extending the electronics communications networks and training personnel, and improving public health laboratories.

(2) Improving hospital response capabilities by assisting hospitals in developing plans for a bioterrorist attack and improving the surge capacity of hospitals.

(3) Upgrading the bioterrorism capabilities of the Centers for Disease Control and Prevention through improving rapid identification and health early warning systems.

(4) Improving disaster response medical systems, such as the National Disaster Medical System and the Metropolitan Medical Response System and Epidemic Intelligence Service.

(5) Targeting research to assist with the development of appropriate therapeutics and vaccines for likely bioterrorist agents and assisting with expedited drug and device review through the Food and Drug Administration.

(6) Improving the National Pharmaceutical Stockpile program by increasing the amount of necessary therapies (including smallpox vaccines and other post-exposure vaccines) and ensuring the appropriate deployment of stockpiles.

(7) Targeting activities to increase food safety at the Food and Drug Administration.

(8) Increasing international cooperation to secure dangerous biological agents, increase surveillance, and retrain biological warfare specialists.

**SEC. 1014. [42 U.S.C. 3711] GRANT PROGRAM FOR STATE AND LOCAL DOMESTIC PREPAREDNESS SUPPORT.**

(a) **IN GENERAL.**—The Office for Domestic Preparedness<sup>1</sup> of the Office of Justice Programs shall make a grant to each State, which shall be used by the State, in conjunction with units of local government, to enhance the capability of State and local jurisdictions to prepare for and respond to terrorist acts including events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices.

(b) **USE OF GRANT AMOUNTS.**—Grants under this section may be used to purchase needed equipment and to provide training and technical assistance to State and local first responders. In addition, grants under this section may be used to construct, develop, expand, modify, operate, or improve facilities to provide training or assistance to State and local first responders.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There is authorized to be appropriated to carry out this section such sums as necessary for each of fiscal years 2002 through 2007.

(2) **LIMITATIONS.**—Of the amount made available to carry out this section in any fiscal year not more than 3 percent may be used by the Attorney General for salaries and administrative expenses.

(3) **MINIMUM AMOUNT.**—Each State shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section, except that the United States Virgin Islands, America Samoa, Guam, and the Northern Mariana Islands each shall be allocated not less than 0.25 percent.

**SEC. 1015. EXPANSION AND REAUTHORIZATION OF THE CRIME IDENTIFICATION TECHNOLOGY ACT FOR ANTITERRORISM GRANTS TO STATES AND LOCALITIES.**

Section 102 of the Crime Identification Technology Act of 1998 (42 U.S.C. 14601) is amended—

(1) in subsection (b)—

(A) in paragraph (16), by striking “and” at the end;

(B) in paragraph (17), by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(18) notwithstanding subsection (c), antiterrorism purposes as they relate to any other uses under this section or for other antiterrorism programs.”; and

(2) in subsection (e)(1), by striking “this section” and all that follows and inserting “this section \$250,000,000 for each of fiscal years 2002 through 2007.”.

<sup>1</sup>Section 11003(a) of the 21st Century Department of Justice Appropriations Authorization Act (P.L. 107-273; 116 Stat. 1816) amended this subsection by striking “Office of State and Local Domestic Preparedness Support” and inserting “Office for Domestic Preparedness”. The amendment should have stricken “Office for State and Local Domestic Preparedness Support” and has been executed above as the probable intent of Congress.

**SEC. 1016. [42 U.S.C. 5195c] CRITICAL INFRASTRUCTURES PROTECTION.**

(a) **SHORT TITLE.**—This section may be cited as the “Critical Infrastructures Protection Act of 2001”.

(b) **FINDINGS.**—Congress makes the following findings:

(1) The information revolution has transformed the conduct of business and the operations of government as well as the infrastructure relied upon for the defense and national security of the United States.

(2) Private business, government, and the national security apparatus increasingly depend on an interdependent network of critical physical and information infrastructures, including telecommunications, energy, financial services, water, and transportation sectors.

(3) A continuous national effort is required to ensure the reliable provision of cyber and physical infrastructure services critical to maintaining the national defense, continuity of government, economic prosperity, and quality of life in the United States.

(4) This national effort requires extensive modeling and analytic capabilities for purposes of evaluating appropriate mechanisms to ensure the stability of these complex and interdependent systems, and to underpin policy recommendations, so as to achieve the continuous viability and adequate protection of the critical infrastructure of the Nation.

(c) **POLICY OF THE UNITED STATES.**—It is the policy of the United States—

(1) that any physical or virtual disruption of the operation of the critical infrastructures of the United States be rare, brief, geographically limited in effect, manageable, and minimally detrimental to the economy, human and government services, and national security of the United States;

(2) that actions necessary to achieve the policy stated in paragraph (1) be carried out in a public-private partnership involving corporate and non-governmental organizations; and

(3) to have in place a comprehensive and effective program to ensure the continuity of essential Federal Government functions under all circumstances.

(d) **ESTABLISHMENT OF NATIONAL COMPETENCE FOR CRITICAL INFRASTRUCTURE PROTECTION.**—

(1) **SUPPORT OF CRITICAL INFRASTRUCTURE PROTECTION AND CONTINUITY BY NATIONAL INFRASTRUCTURE SIMULATION AND ANALYSIS CENTER.**—There shall be established the National Infrastructure Simulation and Analysis Center (NISAC) to serve as a source of national competence to address critical infrastructure protection and continuity through support for activities related to counterterrorism, threat assessment, and risk mitigation.

(2) **PARTICULAR SUPPORT.**—The support provided under paragraph (1) shall include the following:

(A) Modeling, simulation, and analysis of the systems comprising critical infrastructures, including cyber infrastructure, telecommunications infrastructure, and physical infrastructure, in order to enhance understanding of the large-scale complexity of such systems and to facilitate

modification of such systems to mitigate the threats to such systems and to critical infrastructures generally.

(B) Acquisition from State and local governments and the private sector of data necessary to create and maintain models of such systems and of critical infrastructures generally.

(C) Utilization of modeling, simulation, and analysis under subparagraph (A) to provide education and training to policymakers on matters relating to—

(i) the analysis conducted under that subparagraph;

(ii) the implications of unintended or unintentional disturbances to critical infrastructures; and

(iii) responses to incidents or crises involving critical infrastructures, including the continuity of government and private sector activities through and after such incidents or crises.

(D) Utilization of modeling, simulation, and analysis under subparagraph (A) to provide recommendations to policymakers, and to departments and agencies of the Federal Government and private sector persons and entities upon request, regarding means of enhancing the stability of, and preserving, critical infrastructures.

(3) RECIPIENT OF CERTAIN SUPPORT.—Modeling, simulation, and analysis provided under this subsection shall be provided, in particular, to relevant Federal, State, and local entities responsible for critical infrastructure protection and policy.

(e) CRITICAL INFRASTRUCTURE DEFINED.—In this section, the term “critical infrastructure” means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized for the Department of Defense for fiscal year 2002, \$20,000,000 for the Defense Threat Reduction Agency for activities of the National Infrastructure Simulation and Analysis Center under this section in that fiscal year.



## **B. DISCLOSURE AND PROTECTION OF INFORMATION**

### **SECTION 552 OF TITLE 5, UNITED STATES CODE (THE "FREEDOM OF INFORMATION ACT")**

#### **§ 552. Public information; agency rules, opinions, orders, records, and proceedings**

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or for-

mat requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this sec-

tion. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter *de novo*: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter *de novo*, and may examine the contents of such agency records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed.]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation

and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, “unusual circumstances” means, but only to the extent reasonably necessary to the proper processing of the particular requests—

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term “exceptional circumstances” does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

- (I) in cases in which the person requesting the records demonstrates a compelling need; and
- (II) in other cases determined by the agency.
- (ii) Notwithstanding clause (i), regulations under this subparagraph must ensure—
- (I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and
- (II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.
- (iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.
- (iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.
- (v) For purposes of this subparagraph, the term “compelling need” means—
- (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.
- (vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person’s knowledge and belief.
- (F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.
- (b) This section does not apply to matters that are—
- (1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) estab-

lishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include—

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term—

(1) “agency” as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) “record” and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

**SECTION 552a OF TITLE 5, UNITED STATES CODE  
(THE "PRIVACY ACT")**

**§ 552a. Records maintained on individuals**

(a) DEFINITIONS.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e)<sup>1</sup> of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

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<sup>1</sup>Reference probably should be to "552(f)". Section 1802(b) of P.L. 99-570 (100 Stat. 3207-49) redesignated subsection (e) of section 552 as (f).

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986; or

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency

which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof,<sup>1</sup> any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; and<sup>2</sup>

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

<sup>1</sup> So in law; "thereof," should probably be "thereof or".

<sup>2</sup> So in law. Probably should be "; or".

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.<sup>1</sup>

(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

<sup>1</sup> So in law. Paragraph (5) should probably be a separate sentence.

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) CIVIL REMEDIES.—Whenever any agency—

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual crimi-

nal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) GOVERNMENT CONTRACTORS.—(1) When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require

the withholding of names and addresses otherwise permitted to be made public.

(o) MATCHING AGREEMENTS.—(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financed assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations<sup>1</sup> of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—

(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

<sup>1</sup>The Committee on Government Operations was renamed to the Committee on Government Reform and Oversight by H. Res. 6 in the 104th Congress, and renamed the Committee on Government Reform by H. Res. 5 in the 106th Congress.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) SANCTIONS.—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations<sup>1</sup> of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) BIENNIAL REPORT.—The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the

<sup>1</sup>The Committee on Government Operations was renamed to the Committee on Government Reform and Oversight by H. Res. 6 in the 104th Congress, and renamed the Committee on Government Reform by H. Res. 5 in the 106th Congress.

Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership to structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations<sup>1</sup> of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

<sup>1</sup>The Committee on Government Operations was renamed to the Committee on Government Reform and Oversight by H. Res. 6 in the 104th Congress, and renamed the Committee on Government Reform by H. Res. 5 in the 106th Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.—  
The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to an oversight of the implementation of this section by agencies.

**SELECTED SECTIONS OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978 (EXEMPTION FOR INTELLIGENCE AGENCIES; REPORTING REQUIREMENT)**

DEFINITIONS

SEC. 1101. [12 U.S.C. 3401] For the purpose of this title, the term—

(1) “financial institution” means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) “financial record” means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer’s relationship with the financial institution;

(3) “Government authority” means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) “person” means an individual or a partnership of five or fewer individuals;

(5) “customer” means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person’s name;

(6) “holding company” means—

(A) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956);

(B) any company described in section 4(f)(1) of the Bank Holding Company Act of 1956; and

(C) any savings and loan holding company (as defined in the Home Owners’ Loan Act);

(7) “supervisory agency” means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) the Federal Deposit Insurance Corporation;

(B) Director, Office of Thrift Supervision;

(C) the National Credit Union Administration;

(D) the Board of Governors of the Federal Reserve System;

(E) the Comptroller of the Currency;

(F) the Securities and Exchange Commission;

(G) the Commodity Futures Trading Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91-508, title I and II); or

(I) any State banking or securities department or agency; and

(8) "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

\* \* \* \* \*

#### SPECIAL PROCEDURES

SEC. 1114. [12 U.S.C. 3414] (a)(1) Nothing in this title (except sections 1115, 1117, 1118, and 1121) shall apply to the production and disclosure of financial records pursuant to requests from—

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities;

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90-331, as amended); or

(C)<sup>1</sup> a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses.

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.

(3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a for-

<sup>1</sup> Margin so in law.

eign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(C) On the dates provided in section 507 of the National Security Act of 1947, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) concerning all requests made pursuant to this paragraph.

(D) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.

(b)(1) Nothing in this title shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of—

(A) physical injury to any person;

(B) serious property damage; or

(C) flight to avoid prosecution.

(2) In the instances specified in paragraph (1), the Government shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.

(3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 1109(c).

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

#### COST REIMBURSEMENT

SEC. 1115. [12 U.S.C. 3415] (a) Except for records obtained pursuant to section 1103(d) or 1113 (a) through (h), or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this title a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(b) This section shall take effect on October 1, 1979.

#### JURISDICTION

SEC. 1116. [12 U.S.C. 3416] An action to enforce any provision of this title may be brought in any appropriate United States district court without regard to the amount in controversy within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

#### CIVIL PENALTIES

SEC. 1117. [12 U.S.C. 3417] (a) Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this title is liable to the customer to whom such records relate in an amount equal to the sum of—

- (1) \$100 without regard to the volume of records involved;
- (2) any actual damages sustained by the customer as a result of the disclosure;
- (3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and
- (4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Whenever the court determines that any agency or department of the United States has violated any provision of this title and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Commission after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(c) Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to this title in good-faith reliance upon a certificate by any Government authority or pursuant to the provisions of section 1113(l) shall not be liable to the customer for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(d) The remedies and sanctions described in this title shall be the only authorized judicial remedies and sanctions for violations of this title.

#### INJUNCTIVE RELIEF

SEC. 1118. [12 U.S.C. 3418] In addition to any other remedy contained in this title, injunctive relief shall be available to require that the procedures of this title are complied with. In the event of

any successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

#### SUSPENSION OF STATUTES OF LIMITATIONS

SEC. 1119. [12 U.S.C. 3419] If any individual files a motion or application under this title which has the effect of delaying the access of a Government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

\* \* \* \* \*

#### REPORTING REQUIREMENTS

SEC. 1121. [12 U.S.C. 3421] (a) In April of each year, the Director of the Administrative Office of the United States Courts shall send to the appropriate committees of Congress a report concerning the number of applications for delays of notice made pursuant to section 1109 and the number of customer challenges made pursuant to section 1110 during the preceding calendar year. Such report shall include: the identity of the Government authority requesting a delay of notice; the number of notice delays sought and the number granted under each subparagraph of section 1109(a)(3); the number of notice delay extensions sought and the number granted; and the number of customer challenges made and the number that are successful.

(b) In April of each year, each Government authority that requests access to financial records of any customer from a financial institution pursuant to section 1104, 1105, 1106, 1107, 1108, 1109, or 1114 shall send to the appropriate committees of Congress a report describing requests made during the preceding calendar year. Such report shall include the number of requests for records made pursuant to each section of this title listed in the preceding sentence and any other related information deemed relevant or useful by the Government authority.

**SECTION 13(b) OF THE SECURITIES EXCHANGE ACT OF  
1934 (REPORTING REQUIREMENTS AND NATIONAL SE-  
CURITY EXEMPTION)**

SEC. 13. [15 U.S.C. 78m] (a) \* \* \*

(b)(1) The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earning statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

(2) Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Sarbanes-Oxley Act of 2002.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer which has a class of securities registered pursuant to section 12 of this title or an issuer which is required to file reports pursuant to section 15(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

[Subsections (c) through (h) omitted.]

**SECTION 2709 OF TITLE 18, UNITED STATES CODE**

**§2709. Counterintelligence access to telephone toll and transactional records**

(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may—

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and

(2) request the name, address, and length of service of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all requests made under subsection (b) of this section.

## CHAPTER 37 OF TITLE 18, UNITED STATES CODE

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### CHAPTER 37—ESPIONAGE AND CENSORSHIP

Sec.

[791. Repealed.]

792. Harboring or concealing persons.

793. Gathering, transmitting or losing defense information.

794. Gathering or delivering defense information to aid foreign government.

795. Photographing and sketching defense installations.

796. Use of aircraft for photographing defense installations.

797. Publication and sale of photographs of defense installations.

798. Disclosure of classified information.

798A. Temporary extension of section 794.

799. Violation of regulations of National Aeronautics and Space Administration.

**[§ 791. Repealed. Pub. L. 87-369, § 1, Oct. 4, 1961, 75 Stat. 795]**

#### **§ 792. Harboring or concealing persons**

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined under this title or imprisoned not more than ten years, or both.

#### **§ 793. Gathering, transmitting or losing defense information**

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohib-

ited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation

of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined under this title or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(h)(1) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from any foreign government, or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, as the result of such violation. For the purposes of this subsection, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c), and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)–(p)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

#### **§ 794. Gathering or delivering defense information to aid foreign government**

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life, except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense resulted in the

identification by a foreign power (as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978) of an individual acting as an agent of the United States and consequently in the death of that individual, or directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

For the purposes of this subsection, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)–(p)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

**§ 795. Photographing and sketching defense installations**

(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary.

(b) Whoever violates this section shall be fined under this title or imprisoned not more than one year, or both.

**§ 796. Use of aircraft for photographing defense installations**

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined under this title or imprisoned not more than one year, or both.

**§ 797. Publication and sale of photographs of defense installations**

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined under this title or imprisoned not more than one year, or both.

**§ 798. Disclosure of classified information**

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign

government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the process of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined under this title or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term “classified information” means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms “code,” “cipher,” and “cryptographic system” include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term “foreign government” includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term “communication intelligence” means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term “unauthorized person” means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(B) any of the person’s property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1).

(3) Except as provided in paragraph (4), the provisions of subsections (b), (c), and (e) through (p) of section 413 of the Com-

prehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (b), (c), and (e)–(p)), shall apply to—

- (A) property subject to forfeiture under this subsection;
- (B) any seizure or disposition of such property; and
- (C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

(5) As used in this subsection, the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

#### **§ 798A. Temporary extension of section 794**

The provisions of section 794 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

#### **§ 799. Violation of regulations of National Aeronautics and Space Administration**

Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined under this title, or imprisoned not more than one year, or both.

\* \* \* \* \*

#### **§ 3239. Optional venue for espionage and related offenses**

The trial for any offense involving a violation, begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district, of—

- (1) section 793, 794, 798, or section 1030(a)(1) of this title;

(2) section 601 of the National Security Act of 1947 (50 U.S.C. 421); or

(3) section 4(b) or 4(c) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783 (b) or (c));  
may be in the District of Columbia or in any other district authorized by law.

**SECTION 4 OF THE SUBVERSIVE ACTIVITIES CONTROL  
ACT OF 1950 (THE "SCARBECK ACT")**

AN ACT To protect the United States against certain un-American and subversive activities by requiring registration of Communist organizations, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Internal Security Act of 1950".

**TITLE I—SUBVERSIVE ACTIVITIES CONTROL**

**[Sections 1 through 3 repealed by section 803(1) of P.L. 103-199 (107 Stat. 2329).]**

\* \* \* \* \*

**CERTAIN PROHIBITED ACTS**

**SEC. 4. [50 U.S.C. 783]** (a) It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employees shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

(b) It shall be unlawful for any agent or representative of any foreign government, or any officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, knowingly to obtain or receive, or attempt to obtain or receive, directly or indirectly, from any officer or employee of the United States or of any department or agency thereof or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless special authorization for such communication shall first have been obtained from the head of the department, agency, or corporation having custody of or control over such information.

(c) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than \$10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

(d) Any person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after the commission of such offense, notwithstanding the provisions of any other statute of limitations: *Provided*, That if at the time of the commission of the offense such person is an officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, such person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after such person has ceased to be employed as such officer or employee.

**SECTION 952 OF TITLE 18, UNITED STATES CODE**

**§ 952. Diplomatic codes and correspondence**

Whoever, by virtue of his employment by the United States, obtains from another or has or has had custody of or access to, any official diplomatic code or any matter prepared in any such code, or which purports to have been prepared in any such code, and without authorization or competent authority, willfully publishes or furnishes to another any such code or matter, or any matter which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United States, shall be fined under this title or imprisoned not more than ten years, or both.

**SECTIONS 1702 AND 1703 OF TITLE 18, UNITED STATES  
CODE**

**§ 1702. Obstruction of correspondence**

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined under this title or imprisoned not more than five years, or both.

**§ 1703. Delay or destruction of mail or newspapers**

(a) Whoever, being a Postal Service officer or employee, unlawfully secretes, destroys, detains, delays, or opens any letter, postal card, package, bag, or mail entrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or the Postal Service, shall be fined under this title or imprisoned not more than five years, or both.

(b) Whoever, being a Postal Service officer or employee, improperly detains, delays, or destroys any newspaper, or permits any other person to detain, delay, or destroy the same, or opens, or permits any other person to open, any mail or package of newspapers not directed to the office where he is employed; or

Whoever, without authority, opens, or destroys any mail or package of newspapers not directed to him, shall be fined under this title or imprisoned not more than one year, or both.

**SECTION 3623(d) OF TITLE 39, UNITED STATES CODE**

**§ 3623. Mail classification**

(a) \* \* \*

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(d) The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service. No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee.

**SECTION 716 OF TITLE 31, UNITED STATES CODE (ACCESS TO AGENCY RECORDS BY COMPTROLLER GENERAL)**

**§ 716. Availability of information and inspection of records**

(a) Each agency shall give the Comptroller General information the Comptroller General requires about the duties, powers, activities, organization, and financial transactions of the agency. The Comptroller General may inspect an agency record to get the information. This subsection does not apply to expenditures made under section 3524 or 3526(e) of this title.

(b)(1) When an agency record is not made available to the Comptroller General within a reasonable time, the Comptroller General may make a written request to the head of the agency. The request shall state the authority for inspecting the records and the reason for the inspection. The head of the agency has 20 days after receiving the request to respond. The response shall describe the record withheld and the reason the record is being withheld. If the Comptroller General is not given an opportunity to inspect the record within the 20-day period, the Comptroller General may file a report with the President, the Director of the Office of Management and Budget, the Attorney General, the head of the agency, and Congress.

(2) Through an attorney the Comptroller General designates in writing, the Comptroller General may bring a civil action in the district court of the United States for the District of Columbia to require the head of the agency to produce a record—

(A) after 20 days after a report is filed under paragraph

(1) of this subsection; and

(B) subject to subsection (d) of this section.

(3) The Attorney General may represent the head of the agency. The court may punish a failure to obey an order of the court under this subsection as a contempt of court.

(c)(1) Subject to subsection (d) of this section, the Comptroller General may subpoena a record of a person not in the United States Government when the record is not made available to the Comptroller General to which the Comptroller General has access by law or by agreement of that person from whom access is sought. A subpoena shall identify the record and the authority for the inspection and may be issued by the Comptroller General. The Comptroller General may have an individual serve a subpoena under this subsection by delivering a copy to the person named in the subpoena or by mailing a copy of the subpoena by certified or registered mail, return receipt requested, to the residence or principal place of business of the person. Proof of service is shown by a verified return by the individual serving the subpoena that states how the subpoena was served or by the return receipt signed by the person served.

(2) If a person residing, found, or doing business in a judicial district refuses to comply with a subpoena issued under paragraph (1) of this subsection, the Comptroller General, through an attorney the Comptroller General designates in writing, may bring a civil action in that district court to require the person to produce the record. The court has jurisdiction of the action and may punish a failure to obey an order of the court under this subsection as a contempt of court.

(d)(1) The Comptroller General may not bring a civil action for a record withheld under subsection (b) of this section or issue a subpoena under subsection (c) of this section if—

(A) the record related to activities the President designates as foreign intelligence or counterintelligence activities;

(B) the record is specifically exempted from disclosure to the Comptroller General by a statute that—

(i) without discretion requires that the record be withheld from the Comptroller General;

(ii) established particular criteria for withholding the record from the Comptroller General; or

(iii) refers to particular types of records to be withheld from the Comptroller General; or

(C) by the 20th day after a report is filed under subsection (b)(1) of this section, the President or the Director certifies to the Comptroller General and Congress that a record could be withheld under section 552(b)(5) or (7) of title 5 and disclosure reasonably could be expected to impair substantially the operations of the Government.

(2) The President or the Director may not delegate certification under paragraph (1)(C) of this subsection. A certification shall include a complete explanation of the reasons for the certification.

(e)(1) The Comptroller General shall maintain the same level of confidentiality for a record made available under this section as is required of the head of the agency from which it is obtained. Officers and employees of the General Accounting Office are subject to the same statutory penalties for unauthorized disclosure or use as officers or employees of the agency.

(2) The Comptroller General shall keep information described in section 552(b)(6) of title 5 that the Comptroller General obtains in a way that prevents unwarranted invasions of personal privacy.

(3) This section does not authorize information to be withheld from Congress.

## CHAPTER 17 OF TITLE 35, UNITED STATES CODE

### CHAPTER 17—SECRECY OF CERTAIN INVENTIONS AND FILING APPLICATIONS IN FOREIGN COUNTRY

- Sec.  
181. Secrecy of certain inventions and withholding of patent.  
182. Abandonment of invention for unauthorized disclosure.  
183. Right of compensation.<sup>1</sup>  
184. Filing of application in foreign country.  
185. Patent barred for filing without license.  
186. Penalty.  
187. Nonapplicability to certain persons.  
188. Rules and regulations, delegation of power.

#### **§ 181. Secrecy of certain inventions and withholding of patent**

Whenever publication or disclosure by the publication of an application or<sup>2</sup> by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Commissioner of Patents upon being so notified shall order that the invention be kept secret and shall withhold the publication of the application or<sup>2</sup> the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention by the publication of an application or<sup>3</sup> by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner of Patents, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion of the Atomic Energy Commission, the Secretary of a Defense Department, or the chief officer of another department or agency so designated, the publication or disclosure of the invention by the publication of the

<sup>1</sup> So in original. Does not conform to section catchline.

<sup>2</sup> Section 4507(7)(A) of the Intellectual Property and Communications Omnibus Reform Act of 1999 (113 Stat. 1501A–566), as enacted by section 1000(a)(9) of Public Law 106–113 (113 Stat. 1536), inserts “by the publication of an application or” after “disclosure” and inserts “the publication of the application or” after “withhold”. For effective date of this amendment, see section 4508 of the Act set out in a footnote to section 119(b).

<sup>3</sup> Section 4804(c) of the Intellectual Property and Communications Omnibus Reform Act of 1999 (113 Stat. 1501A–566), as enacted by section 1000(a)(9) of Public Law 106–113 (113 Stat. 1536), inserts “by the publication of an application or” after “disclosure of an invention”. For effective date of this amendment, see section 4508 of the Act set out in a footnote to section 119(b).

application or<sup>1</sup> by the granting of a patent therefor would be detrimental to the national security, the Atomic Energy Commission, the Secretary of a Defense Department, or such other chief officer shall notify the Commissioner of Patents and the Commissioner of Patents shall order that the invention be kept secret and shall withhold the publication of the application or<sup>1</sup> the grant of a patent for such period as the national interest requires, and notify the applicant thereof. Upon proper showing by the head of the department or agency who caused the secrecy order to be issued that the examination of the application might jeopardize the national interest, the Commissioner of Patents shall thereupon maintain the application in a sealed condition and notify the applicant thereof. The owner of an application which has been placed under a secrecy order shall have a right to appeal from the order to the Secretary of Commerce under rules prescribed by him.

An invention shall not be ordered kept secret and the publication of an application or<sup>2</sup> the grant of a patent withheld for a period of more than one year. The Commissioner of Patents shall renew the order at the end thereof, or at the end of any renewal period, for additional periods of one year upon notification by the head of the department or the chief officer of the agency who caused the order to be issued that an affirmative determination has been made that the national interest continues so to require. An order in effect, or issued, during a time when the United States is at war, shall remain in effect for the duration of hostilities and one year following cessation of hostilities. An order in effect, or issued, during a national emergency declared by the President shall remain in effect for the duration of the national emergency and six months thereafter. The Commissioner of Patents may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention is no longer deemed detrimental to the national security.

#### **§ 182. Abandonment of invention for unauthorized disclosure**

The invention disclosed in an application for patent subject to an order made pursuant to section 181 of this title may be held abandoned upon its being established by the Commissioner of Patents that in violation of said order the invention has been published or disclosed or that an application for a patent therefor has been filed in a foreign country by the inventor, his successors, assigns, or legal representatives, or anyone in privity with him or them, without the consent of the Commissioner of Patents. The abandonment shall be held to have occurred as of the time of violation. The consent of the Commissioner of Patents shall not be given

<sup>1</sup> Section 4507(7)(C) of the Intellectual Property and Communications Omnibus Reform Act of 1999 (113 Stat. 1501A-566), as enacted by section 1000(a)(9) of Public Law 106-113 (113 Stat. 1536), inserts "by the publication of the application or" after "disclosure of the invention" and "the publication of the application or" after "withhold". For effective date of this amendment, see section 4508 of the Act set out in a footnote to section 119(b).

<sup>2</sup> Section 4507(7)(D) of the Intellectual Property and Communications Omnibus Reform Act of 1999 (113 Stat. 1501A-566), as enacted by section 1000(a)(9) of Public Law 106-113 (113 Stat. 1536), inserts "the publication of an application or" after "and" in the first sentence. For effective date of this amendment, see section 4508 of the Act set out in a footnote to section 119(b).

without the concurrence of the heads of the departments and the chief officers of the agencies who caused the order to be issued. A holding of abandonment shall constitute forfeiture by the applicant, his successors, assigns, or legal representatives, or anyone in privity with him or them, of all claims against the United States based upon such invention.

### **§ 183. Right to compensation**

An applicant, his successors, assigns, or legal representatives, whose patent is withheld as herein provided, shall have the right, beginning at the date the applicant is notified that, except for such order, his application is otherwise in condition for allowance, or February 1, 1952, whichever is later, and ending six years after a patent is issued thereon, to apply to the head of any department or agency who caused the order to be issued for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government, resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. The head of the department or agency is authorized, upon the presentation of a claim, to enter into an agreement with the applicant, his successors, assigns, or legal representatives, in full settlement for the damage and/or use. This settlement agreement shall be conclusive for all purposes notwithstanding any other provision of law to the contrary. If full settlement of the claim cannot be effected, the head of the department or agency may award and pay to such applicant, his successors, assigns, or legal representatives, a sum not exceeding 75 per centum of the sum which the head of the department or agency considers just compensation for the damage and/or use. A claimant may bring suit against the United States in the United States Court of Federal Claims or in the District Court of the United States for the district in which such claimant is a resident for an amount which when added to the award shall constitute just compensation for the damage and/or use of the invention by the Government. The owner of any patent issued upon an application that was subject to a secrecy order issued pursuant to section 181 of this title, who did not apply for compensation as above provided, shall have the right, after the date of issuance of such patent, to bring suit in the United States Court of Federal Claims for just compensation for the damage caused by reason of the order of secrecy and/or use by the Government of the invention resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. In a suit under the provisions of this section the United States may avail itself of all defenses it may plead in an action under section 1498 of title 28. This section shall not confer a right of action on anyone or his successors, assigns, or legal representatives who, while in the full-time employment or service of the United States, discovered, invented, or developed the invention on which the claim is based.

### **§ 184. Filing of application in foreign country**

Except when authorized by a license obtained from the Commissioner of Patents a person shall not file or cause or authorize

to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner of Patents pursuant to section 181 of this title without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been filed abroad through error and without deceptive intent and the application does not disclose an invention within the scope of section 181 of this title.

The term "application" when used in this chapter includes applications and any modifications, amendments, or supplements thereto, or divisions thereof.

The scope of a license shall permit subsequent modifications, amendments, and supplements containing additional subject matter if the application upon which the request for the license is based is not, or was not, required to be made available for inspection under section 181 of this title and if such modifications, amendments, and supplements do not change the general nature of the invention in a manner which would require such application to be made available for inspection under such section 181. In any case in which a license is not, or was not, required in order to file an application in any foreign country, such subsequent modifications, amendments, and supplements may be made, without a license, to the application filed in the foreign country if the United States application was not required to be made available for inspection under section 181 and if such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require the United States application to have been made available for inspection under such section 181.

#### **§ 185. Patent barred for filing without license**

Notwithstanding any other provisions of law any person, and his successors, assigns, or legal representatives, shall not receive a United States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention. A United States patent issued to such person, his successors, assigns, or legal representatives shall be invalid, unless the failure to procure such license was through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title..<sup>1</sup>

#### **§ 186. Penalty**

Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon

<sup>1</sup> So in original.

withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever willfully, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than two years, or both.

**§ 187. Nonapplicability to certain persons**

The prohibitions and penalties of this chapter shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon his written instructions or permission.

**§ 188. Rules and regulations, delegation of power**

The Atomic Energy Commission, the Secretary of a defense department, the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States, and the Secretary of Commerce, may separately issue rules and regulations to enable the respective department or agency to carry out the provisions of this chapter, and may delegate any power conferred by this chapter.

**CHAPTERS 2, 12, AND 18 OF THE ATOMIC ENERGY ACT  
OF 1954 (PROTECTION OF ATOMIC ENERGY INFORMATION)<sup>1</sup>**

**CHAPTER 2. DEFINITIONS**

SEC. 11. [42 U.S.C. 2014] DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

a. The term “agency of the United States” means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee, commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.

\* \* \* \* \*

h. The term “defense information” means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

\* \* \* \* \*

i. The term “Government agency” means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

\* \* \* \* \*

q. The term “nuclear incident” means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in section 170 l., it shall include any such occurrence outside the United States: *And provided further,* That as the term is used in section 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further,* That as the

<sup>1</sup>Throughout the Atomic Energy Act of 1954, the term “Commission” means the Atomic Energy Commission. The functions of the Atomic Energy Commission, which previously were transferred to the Administrator of the Energy Research and Development Administration, were transferred to the Secretary of Energy by section 301 of the Department of Energy Organization Act (Public Law 95-91; 91 Stat. 577).

term is used in section 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used on connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

\* \* \* \* \*

s. The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

\* \* \* \* \*

y. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142.

\* \* \* \* \*

CHAPTER 12. CONTROL OF INFORMATION

SEC. 141. [42 U.S.C. 2161] POLICY.—It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

a. Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 144; and

b. The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

SEC. 142. [42 U.S.C. 2162] CLASSIFICATION AND DECLASSIFICATION OF RESTRICTED DATA.—

a. The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk of the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

b. The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guid-

ance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

c. In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

d. The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however*, That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with subsection b. or d. of section 144.

e. The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended, and can be adequately safeguarded as defense information.

SEC. 143. [42 U.S.C. 2163] DEPARTMENT OF DEFENSE PARTICIPATION.—The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under subsections 145 b. and 145 c. to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided, however*, That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further*, That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 145.

SEC. 144. [42 U.S.C. 2164] INTERNATIONAL COOPERATION.—

a. The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on—

- (1) refining, purification, and subsequent treatment of source material;
- (2) civilian reactor development;
- (3) production of special nuclear material;
- (4) health and safety;
- (5) industrial and other applications of atomic energy for peaceful purposes; and
- (6) research and development relating to the foregoing:

*Provided, however,* That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123, or is undertaken pursuant to an agreement existing on the effective date of this Act.<sup>1</sup>

b. The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data (including design information) as is necessary to—

- (1) the development of defense plans;
- (2) the training of personnel in the employment of and defense against atomic weapons and other military applications of atomic energy;
- (3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and
- (4) the development of compatible delivery systems for atomic weapons;

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

c. In addition to the cooperation authorized in subsections 144 a. and 144 b., the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and—

- (1) to exchange with that nation Restricted Data concerning atomic weapons: *Provided,* That communication of such Restricted Data to that nation is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons; and
- (2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, of military reactors,

<sup>1</sup> The effective date was Aug. 30, 1954.

whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

d. (1) In addition to the cooperation authorized in subsections a., b., and c., the President may, upon making a determination described in paragraph (2), authorize the Department of Energy, with the assistance of the Department of Defense, to cooperate with another nation to communicate to that nation such Restricted Data, and the President may, upon making such determination, authorize the Department of Defense, with the assistance of the Department of Energy, to cooperate with another nation to communicate to that nation such data removed from the Restricted Data category under section 142, as is necessary for—

(A) the support of a program for the control of and accounting for fissile material and other weapons material;

(B) the support of the control of and accounting for atomic weapons;

(C) the verification of a treaty; and

(D) the establishment of international standards for the classification of data on atomic weapons, data on fissile material, and related data.

(2) A determination referred to in paragraph (1) is a determination that the proposed cooperation and proposed communication referred to in that paragraph—

(A) will promote the common defense and security interests of the United States and the nation concerned; and

(B) will not constitute an unreasonable risk to such common defense and security interests.

(3) Cooperation under this subsection shall be undertaken pursuant to an agreement for cooperation entered into in accordance with section 123.

e. The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection 144 a., b., c., or d., such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.

SEC. 145. [42 U.S.C. 2165] RESTRICTIONS.—

a. No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 41, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission<sup>1</sup> shall have made an investigation and

<sup>1</sup> Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Per-

report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

b. Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission<sup>1</sup> shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

c. In lieu of the investigation and report to be made by the Civil Service Commission<sup>1</sup> pursuant to subsection b. of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

d. In the event an investigation made pursuant to subsection a. and b. of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission<sup>1</sup> shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission<sup>1</sup> for its information and appropriate action.

e. (1) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections a., b., and c. of this section be made by the Federal Bureau of Investigation.

(2) In the case of an individual employed in a program known as a Special Access Program or a Personnel Security and Assurance Program, any investigation required by subsections a., b., and c. of this section shall be made by the Federal Bureau of Investigation.

f. Notwithstanding the provisions of subsections a., b., and c., of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation.

g. The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the deter-

sonnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055.

<sup>1</sup> Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055.

mination, pursuant to subsections a., b., and c., of this section, that permitting a person access to restricted data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the restricted data to which access will be permitted.

h. Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145 b., to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

SEC. 146. [42 U.S.C. 2166] GENERAL PROVISIONS.—

a. Sections 141 to 145, inclusive, shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.

b. The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

SEC. 147. [42 U.S.C. 2167] SAFEGUARDS INFORMATION.—

a. In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5 of the United States Code, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed—

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2)<sup>1</sup>

if the unauthorized disclosure 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 signifi-

<sup>1</sup> So in original. Probably should be followed by a semicolon.

cantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection—

(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 disclosure 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 theft, diversion, or sabotage of such material or such facility.

Nothing in this Act shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

b. For the purposes of section 223 of this Act, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act.

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

d. Upon prescribing or issuing any regulation or order under subsection a. of this section, the Commission shall submit to Congress a report that:

(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order 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 theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

e. In addition to the reports required under subsection d. of this section, the Commission shall submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Commission's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order 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 theft, diversion or sabotage of such material or such facility, as specified under subsection a. of this section; and

(3) provide justification that the Commission has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

**SEC. 148. [42 U.S.C. 2168] PROHIBITION AGAINST THE DISSEMINATION OF CERTAIN 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, United States Code, the Secretary, with respect to atomic energy defense programs, of Energy (hereinafter in this section referred to as the "Secretary") 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—

(A) the design of production facilities or utilization facilities;

(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

(C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 142.

(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 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 subsection a. (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 significant 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.

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

b. (1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed \$100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.

(2) The provisions of subsections b. and c. of section 234 of this Act shall be applicable with respect to the imposition of civil penalties by the Secretary under this section in the same manner that such provisions are applicable to the imposition of civil penalties by the Commission under subsection a. of such section.

c. For the purposes of section 223 of this Act, any regulation prescribed or order issued by the Secretary under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act.

d. 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, United States Code.

e. The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall—

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order 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 illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities, as specified under subsection a.; and

(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

SEC. 149. [42 U.S.C. 2169] FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.—

a. The Nuclear Regulatory Commission (in this section referred to as the "Commission") shall require each licensee or applicant for a license to operate a utilization facility under section 103 or 104 b. to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 147. All fingerprints obtained by a licensee or applicant as required in the preceding sentence shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant. Notwithstanding any other provision of law, the Attorney General may provide all the results of the search of the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.

b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.

c. For purposes of administering this section, the Commission shall prescribe, subject to public notice and comment, regulations—

(1) to implement procedures for the taking of fingerprints;

(2) to establish the conditions for use of information received from the Attorney General, in order—

(A) to limit the dissemination of such information;

(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to the facility of a licensee or applicant or shall be permitted access to safeguards information under section 147;

(C) to ensure that no final determination may be made solely on the basis of information provided under this section involving—

(i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal; and

(D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

(3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

d. (1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.

(2) Notwithstanding section 3302(b) of title 31, United States Code, and to the extent approved in appropriation Acts—

(A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and

(B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodically to the Attorney General and used by the Attorney General to carry out this section.

(3) Any amount made available for use under paragraph (2) shall remain available until expended.

\* \* \* \* \*

### CHAPTER 18. ENFORCEMENT

#### SEC. 221. [42 U.S.C. 2271] GENERAL PROVISIONS.—

a. To protect against the unlawful dissemination of Restricted Data and to safeguard facilities, equipment, materials, and other property of the Commission, the President shall have authority to utilize the services of any Government agency to the extent he may deem necessary or desirable.

b. The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations of this Act.

c. No action shall be brought against any individual or person for any violation under this Act unless and until the Attorney General of the United States has advised the Commission with respect to such action and no such action shall be commenced except by the Attorney General of the United States: *Provided, however,* That nothing in this subsection shall be construed as applying to administrative action taken by the Commission.

SEC. 222. [42 U.S.C. 2272] VIOLATION OF SPECIFIC SECTIONS.—Whoever willfully violates, attempts to violate, or conspires to violate, any provision of sections 57, 92, or 101, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under section 108 shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.

SEC. 223. [42 U.S.C. 2273] VIOLATION OF SECTIONS GENERALLY.—a. Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this Act for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under section 65 or subsections 161 b., i., or o. shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than twenty years, or both.

b. Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104 b. of this Act who by act or omission, in connection with such construction or supply,

knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than \$50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term "basic component" means a facility structure, system, component or part thereof necessary to assure—

- (1) the integrity of the reactor coolant pressure boundary,
- (2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or
- (3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 103 or 104 b. of this Act is under construction and on the premises of each plant where components for such a facility are fabricated.

c. Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 170 d. (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this Act or any applicable nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in subsection 11 q. shall, upon conviction, notwithstanding section 3571 of title 18, United States Code, be subject to a fine of not more than \$25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, notwithstanding section 3571 of title 18, United States Code, punishment shall be a fine of not more than \$50,000, or imprisonment for not more than five years, or both.

**SEC. 224. [42 U.S.C. 2274] COMMUNICATION OF RESTRICTED DATA.**—Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data—

- a. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by imprisonment for life, or by

imprisonment for any term of years or a fine of not more than \$100,000 or both;

b. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than \$50,000 or imprisonment for not more than ten years, or both.

SEC. 225. [42 U.S.C. 2275] RECEIPT OF RESTRICTED DATA.—Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires, or attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$100,000 or both.

SEC. 226. [42 U.S.C. 2276] TAMPERING WITH RESTRICTED DATA.—Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating Restricted Data and used by any individual or person in connection with the production of special nuclear material, or research or development relating to atomic energy, conducted by the United States, or financed in whole or in part by Federal funds, or conducted with the aid of special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.

SEC. 227. [42 U.S.C. 2277] DISCLOSURE OF RESTRICTED DATA.—Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or who ever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this Act or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than \$12,500.

SEC. 228. [42 U.S.C. 2278] STATUTE OF LIMITATIONS.—Except for a capital offense, no individual or person shall be prosecuted, tried, or punished for any offense prescribed or defined in sections 224 to 226, inclusive, of this Act, unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.

SEC. 229,<sup>1</sup> [42 U.S.C. 2278a] TRESPASS UPON COMMISSION INSTALLATIONS.—

a.<sup>2</sup> The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapons, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, or in the custody of the Commission. Every such regulation of the Commission shall be posted conspicuously at the location involved.

b. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. shall, upon conviction thereof, be punishable by a fine of not more than \$1,000.

c. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

SEC. 230. [42 U.S.C. 2278b] PHOTOGRAPHING, ETC., OF COMMISSION INSTALLATIONS.—It shall be an offense, punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both—

(1) to make any photograph, sketch, picture, drawing, map or graphical representation, while present on property subject to the jurisdiction, administration or in the custody of the Commission, of any installations or equipment designated by the President as requiring protection against the general dissemination of information relative thereto, in the interest of the common defense and security, without first obtaining the permission of the Commission, and promptly submitting the product obtained to the Commission for inspection or such other action as may be deemed necessary; or

(2) to use or permit the use of an aircraft or any contrivance used, or designed for navigation or flight in air, for the purpose of making a photograph, sketch, picture, drawing, map or graphical representation of any installation or equipment designated by the President as provided in the preceding paragraph, unless authorized by the Commission.

SEC. 231. [42 U.S.C. 2279] OTHER LAWS.—Sections 224 to 230 shall not exclude the applicable provisions of any other laws.

SEC. 232. [42 U.S.C. 2280] INJUNCTION PROCEEDINGS.—Whenever in the judgment of the Commission any person has engaged or is about to be engaged in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order

<sup>1</sup> So in original. Comma probably should be a period.

<sup>2</sup> Indentation of subsections so in original.

enforcing compliance with such provision, and upon a showing by the Commission that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order may be granted.

SEC. 233. [42 U.S.C. 2281] CONTEMPT PROCEEDINGS.—In case of failure or refusal to obey a subpoena served upon any person pursuant to subsection 161 c., the district court for any district in which such person is found or resides or transacts business, upon application by the Attorney General on behalf of the United States, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both, in accordance with the subpoena; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SEC. 234. [42 U.S.C. 2282] CIVIL MONETARY PENALTIES FOR VIOLATIONS OF LICENSING REQUIREMENTS.—

a. Any person who (1) violates any licensing or certification provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or certification issued thereunder, or (2) commits any violation for which a license may be revoked under section 186, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed \$100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.

b. Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.

c. On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

SEC. 234A. [42 U.S.C. 2282a] CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY SAFETY REGULATIONS.—

a.<sup>1</sup> Any person who has entered into an agreement of indemnifica-

<sup>1</sup> Indentation style so in original.

tion under subsection 170 d.<sup>1</sup> (or any subcontractor or supplier thereto) who violates (or whose employee violates) any applicable rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation) shall be subject to a civil penalty of not to exceed \$100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

b. (1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.

c. (1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall

<sup>1</sup> So in original. Probably should be "section 170 d."

promptly assess such penalty, by order, after the date of the election under paragraph (1).

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

d. The provisions of this section shall not apply to:

(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;

(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

SEC. 234B. [42 U.S.C. 2282b] CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY REGULATIONS REGARDING SECURITY OF CLASSIFIED OR SENSITIVE INFORMATION OR DATA.—

a. Any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this Act relating to the safeguarding or security of Restricted Data or other classified or sensitive information

<sup>1</sup> So in original. Probably should be "and".

shall be subject to a civil penalty of not to exceed \$100,000 for each such violation.

b. The Secretary shall include in each contract with a contractor of the Department provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

c. The powers and limitations applicable to the assessment of civil penalties under section 234A, except for subsection d. of that section, shall apply to the assessment of civil penalties under this section.

d. In the case of an entity specified in subsection d. of section 234A—

(1) the assessment of any civil penalty under subsection a. against that entity may not be made until the entity enters into a new contract with the Department of Energy or an extension of a current contract with the Department; and

(2) the total amount of civil penalties under subsection a. in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

**SEC. 234C. [42 U.S.C. 2282c] WORKER HEALTH AND SAFETY RULES FOR DEPARTMENT OF ENERGY NUCLEAR FACILITIES.**

a. REGULATIONS REQUIRED.—

(1) IN GENERAL.—The Secretary shall promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 170 d. of the Atomic Energy Act of 1954, after public notice and opportunity for comment under section 553 of title 5, United States Code (commonly known as the “Administrative Procedure Act”). Such regulations shall, subject to paragraph (3), provide a level of protection for workers at such facilities that is substantially equivalent to the level of protection currently provided to such workers at such facilities.

(2) APPLICABILITY.—The regulations promulgated under paragraph (1) shall not apply to any facility that is a component of, or any activity conducted under, the Naval Nuclear Propulsion Program provided for under Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 42 U.S.C. 7158 note)).

(3) FLEXIBILITY.—In promulgating the regulations under paragraph (1), the Secretary shall include flexibility—

(A) to tailor implementation of such regulations to reflect activities and hazards associated with a particular work environment;

(B) to take into account special circumstances at a facility that is, or is expected to be, permanently closed and

that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse; and

(C) to achieve national security missions of the Department of Energy in an efficient and timely manner.

(4) NO EFFECT ON HEALTH AND SAFETY ENFORCEMENT.—This subsection does not diminish or otherwise affect the enforcement or the application of any other law, regulation, order, or contractual obligation relating to worker health and safety.

b. CIVIL PENALTIES.—

(1) IN GENERAL.—A person (or any subcontractor or supplier of the person) who has entered into an agreement of indemnification under section 170 d. (or any subcontractor or supplier of the person) that violates (or is the employer of a person that violates) any regulation promulgated under subsection a. shall be subject to a civil penalty of not more than \$70,000 for each such violation.

(2) CONTINUING VIOLATIONS.—If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty under paragraph (1).

c. CONTRACT PENALTIES.—

(1) IN GENERAL.—The Secretary shall include in each contract with a contractor of the Department who has entered into an agreement of indemnification under section 170 d. provisions that provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any regulation promulgated under subsection a.

(2) CONTENTS.—The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

d. COORDINATION OF PENALTIES.—

(1) CHOICE OF PENALTIES.—For any violation by a person of a regulation promulgated under subsection a., the Secretary shall pursue either civil penalties under subsection b. or contract penalties under subsection c., but not both.

(2) MAXIMUM AMOUNT.—In the case of an entity described in subsection d. of section 234A, the total amount of civil penalties under subsection b. and contract penalties under subsection c. in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

(3) COORDINATION WITH SECTION 234A.—The Secretary shall ensure that a contractor of the Department is not penalized both under this section and under section 234A for the same violation.

SEC. 235. <sup>1</sup> [42 U.S.C. 2283] PROTECTION OF NUCLEAR INSPECTORS.—

a. Whoever kills any person who performs any inspections which—

<sup>1</sup>Section 202(a) of Pub. L. 96-295 added new section 235 at the end of chapter 18. Section 204(a) of Pub. L. 96-295 added section 236 after section 234. Section 236 was placed after section 235 in this compilation to reflect the probable intent of Congress.

(1) are related to any activity or facility licensed by the Commission, and

(2) are carried out to satisfy requirements under this Act or under any other Federal law governing the safety of utilization facilities required to be licensed under section 103 or 104 b., or the safety of radioactive materials,

shall be punished as provided under sections 1111 and 1112 of title 18, United States Code. The preceding sentence shall be applicable only if such person is killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

b. Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection a. of this section, while such person is engaged in such inspection duties or on account of the performance of such duties, shall be punished as provided under section 111 of title 18, United States Code.

SEC. 236. [42 U.S.C. 2284] SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

a. Any person who intentionally and willfully destroys or causes physical damage to—

(1) any production facility or utilization facility licensed under this Act;

(2) any nuclear waste storage facility licensed under this Act;

(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility; or

(4) any uranium enrichment facility licensed by the Nuclear Regulatory Commission,

or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

b. Any person who intentionally and willfully causes an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

**SECTION 705 OF THE COMMUNICATIONS ACT OF 1934  
(UNAUTHORIZED PUBLICATION OF COMMUNICATIONS)**

**SEC. 705. [47 U.S.C. 605] UNAUTHORIZED PUBLICATION OF COMMUNICATIONS.**

(a) Except as authorized by chapter 119, title 18, United States Code,<sup>1</sup> no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpoena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator.

(b) The provisions of subsection (a) shall not apply to the interception or receipt by any individual, or the assisting (including the manufacture or sale) of such interception or receipt, of any satellite cable programming for private viewing if—

(1) the programming involved is not encrypted; and

<sup>1</sup>Section 2511(2) of title 18, United States Code, authorizes certain interception of communications by communications common carriers and by the Federal Communications Commission. Also, electronic surveillance for foreign intelligence purposes is addressed in P.L. 95-511, 92 Stat. 1783 (see § 102(a)(4) and 105(f)(2)(C)), Oct. 25, 1978.

(2)(A) a marketing system is not established under which—

(i) an agent or agents have been lawfully designated for the purpose of authorizing private viewing by individuals, and

(ii) such authorization is available to the individual involved from the appropriate agent or agents; or

(B) a marketing system described in subparagraph (A) is established and the individuals receiving such programming has obtained authorization for private viewing under that system.<sup>1</sup>

(c) No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.

(d) For purposes of this section—

(1) the term “satellite cable programming” means video programming which is transmitted via satellite and which is primarily intended for the direct receipt by cable operators for their retransmission to cable subscribers;

(2) the term “agent,” with respect to any person, includes an employee of such person;

(3) the term “encrypt,” when used with respect to satellite cable programming, means to transmit such programming in a form whereby the aural and visual characteristics (or both) are modified or altered for the purpose of preventing the unauthorized receipt of such programming by persons without authorized equipment which is designed to eliminate the effects of such modification or alteration;

(4) the term “private viewing” means the viewing for private use in an individual’s dwelling unit by means of equipment, owned or operated by such individual, capable of receiving satellite cable programming directly from a satellite;

(5) the term “private financial gain” shall not include the gain resulting to any individual for the private use of such individual’s dwelling unit of any programming for which the individual has not obtained authorization for that use; and

(6) the term “any person aggrieved” shall include any person with proprietary rights in the intercepted communication by wire or radio, including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (e), shall also include any person engaged in the lawful manufacture, distribution, or sale of

<sup>1</sup>Subsection (c) of section 705 (formerly section 605) was added by section 11 of Public Law 100-626 (the Public Telecommunications Act of 1988). Section 11 of that public law also redesignated the following subsections as subsections (d) through (f). However, this redesignation was not reflected in the amendments to those subsections contained in sections 204 and 205 of Public Law 100-667 (the Satellite Home Viewer Act of 1988). This compilation executes those amendments to the redesignated subsections.

equipment necessary to authorize or receive satellite cable programming.

(e)(1) Any person who willfully violates subsection (a) shall be fined not more than \$2,000 or imprisoned for not more than 6 months, or both.

(2) Any person who violates subsection (a) willfully and for purposes of direct or indirect commercial advantage or private financial gain shall be fined not more than \$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than \$100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction.

(3)(A) Any person aggrieved by any violation of subsection (a) or paragraph (4) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction.

(B) The court—

(i) may grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a);

(ii) may award damages as described in subparagraph (C); and

(iii) shall direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

(C)(i) Damages awarded by any court under this section shall be computed, at the election of the aggrieved party, in accordance with either of the following subclauses;

(I) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(II) the party aggrieved may recover an award of statutory damages for each violation of subsection (a) involved in the action in a sum of not less than \$1,000 or more than \$10,000, as the court considers just, and for each violation of paragraph (4) of this subsection involved in the action an aggrieved party may recover statutory damages in a sum not less than \$10,000, or more than \$100,000, as the court considers just.

(ii) In any case in which the court finds that the violation was committed willfully and for purposes of direct or indirect commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory, by an amount of not more than \$100,000 for each violation of subsection (a).

(iii) In any case where the court finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than \$250.

(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home satellite services, or is intended for any other activity prohibited by subsection (a), shall be fined not more than \$500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

(5) The penalties under this subsection shall be in addition to those prescribed under any other provision of this title.

(6) Nothing in this subsection shall prevent any State, or political subdivision thereof, from enacting or enforcing any laws with respect to the importation, sale, manufacture, or distribution of equipment by any person with the intent of its use to assist in the interception or receipt of radio communications prohibited by subsection (a).

(f) Nothing in this section shall affect any right, obligation, or liability under title 17, United States Code, any rule, regulation, or order thereunder, or any other applicable Federal, State, or local law.

(g) The Commission<sup>1</sup> shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into account—

(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

(2) incorporation of technological enhancements, including advanced television formats;

(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;

(5) the effect of any such standard on competition in the manufacture of decryption equipment; and

(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

(h) If the Commission finds, based on the information gathered from the inquiry required by subsection (g), that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard.

<sup>1</sup> This compilation reflects amendments contained in section 304(a)(15) of the Communications Assistance for Law Enforcement Act (P.L. 103-414).

**SECTIONS 102, 103, AND 104 OF THE REVISED STATUTES  
OF THE UNITED STATES (CONGRESSIONAL INVESTIGATIONS)**

SEC. 102. [2 U.S.C. 192] Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisoned in a common jail for not less than one month nor more than twelve months.

SEC. 103. [2 U.S.C. 193] No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

SEC. 104. [2 U.S.C. 194] Whenever a witness summoned as mentioned in section 102 fails to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, and the fact of such failure or failures is reported to either House while Congress is in session, or when Congress is not in session, a statement of fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action.

**SECTIONS 6002 AND 6005 OF TITLE 18, UNITED STATES  
CODE**

**§ 6002. Immunity generally**

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

- (1) a court or grand jury of the United States,
- (2) an agency of the United States, or
- (3) either House of Congress, a joint committee of the two

Houses, or a committee or a subcommittee of either House, and the person presiding over the proceeding communicates to the witness an order issued under this title, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

\* \* \* \* \*

**§ 6005. Congressional proceedings**

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title.

(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—

(1) in the case of a proceeding before either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

(2) in the case of a proceeding before a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.

**SECTION 8(b) OF THE INSPECTOR GENERAL ACT OF 1978**

ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL  
OF THE DEPARTMENT OF DEFENSE

SEC. 8. (a) \* \* \*

(b)(1) Notwithstanding the last two sentences of section 3(a)<sup>1</sup>, the Inspector General shall be under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—

- (A) sensitive operational plans;
- (B) intelligence matters;
- (C) counterintelligence matters;
- (D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or
- (E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1) the Secretary of Defense may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to preserve the national security interests of the United States.

(3) If the Secretary of Defense exercises any power under paragraph (1) or (2), the Inspector General shall submit a statement concerning such exercise within thirty days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committee on Armed Services Security and the Committee on Government Reform and Oversight of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary shall, within thirty days after submission of a statement under paragraph (3), transmit a statement of the reasons for the exercise of power under paragraph (1) or (2) to the congressional committees specified in paragraph (3) and to other appropriate committees or subcommittees.

\* \* \* \* \*

<sup>1</sup>The last two sentences of such section 3(a) read as follows:  
"Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation."

## **SECTION 8H OF THE INSPECTOR GENERAL ACT OF 1978**

SEC. 8H. (a)(1)(A) An employee of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, or the National Security Agency, or of a contractor of any of those Agencies, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Defense (or designee).

(B) An employee of the Federal Bureau of Investigation, or of a contractor of the Bureau, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Justice (or designee).

(C) Any other employee of, or contractor to, an executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the appropriate Inspector General (or designee) under this Act or section 17 of the Central Intelligence Agency Act of 1949.

(2) If a designee of an Inspector General under this section receives a complaint or information of an employee with respect to an urgent concern, that designee shall report the complaint or information to the Inspector General within 7 calendar days of receipt.

(b) Not later than the end of the 14-calendar day period beginning on the date of receipt of an employee complaint or information under subsection (a), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the head of the establishment notice of that determination, together with the complaint or information.

(c) Upon receipt of a transmittal from the Inspector General under subsection (b), the head of the establishment shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committees, together with any comments the head of the establishment considers appropriate.

(d)(1) If the Inspector General does not find credible under subsection (b) a complaint or information submitted to the Inspector General under subsection (a), or does not transmit the complaint or information to the head of the establishment in accurate form under subsection (b), the employee (subject to paragraph (2)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

(2) The employee may contact the intelligence committees directly as described in paragraph (1) only if the employee—

(A) before making such a contact, furnishes to the head of the establishment, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the intelligence committees directly; and

(B) obtains and follows from the head of the establishment, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

(3) A member or employee of one of the intelligence committees who receives a complaint or information under paragraph (1) does so in that member or employee's official capacity as a member or employee of that committee.

(e) The Inspector General shall notify an employee who reports a complaint or information under this section of each action taken under this section with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

(f) An action taken by the head of an establishment or an Inspector General under subsections (a) through (e) shall not be subject to judicial review.

(g)(1) The Inspector General of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the National Security Agency shall each submit to the congressional intelligence committees each year a report that sets forth the following:

(A) The personnel and funds requested by such Inspector General for the fiscal year beginning in such year for the activities of the office of such Inspector General in such fiscal year.

(B) The plan of such Inspector General for such activities, including the programs and activities scheduled for review by the office of such Inspector General during such fiscal year.

(C) An assessment of the current ability of such Inspector General to hire and retain qualified personnel for the office of such Inspector General.

(D) Any matters that such Inspector General considers appropriate regarding the independence and effectiveness of the office of such Inspector General.

(2) The submittal date for a report under paragraph (1) each year shall be the date provided in section 507 of the National Security Act of 1947.

(3) In this subsection, the term "congressional intelligence committees" shall have the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(h) In this section:

(1) The term "urgent concern" means any of the following:

(A) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

(B) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

(C) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under section 7(c) in response to an employee's reporting an urgent concern in accordance with this section.

(2) The term "intelligence committees" means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

## COMPUTER SECURITY ACT OF 1987

(Public Law 100-235; 101 Stat. 1724; approved January 8, 1988)

AN ACT To provide for a computer standards program within the National Bureau of Standards, to provide for Government-wide computer security, and to provide for the training in security matters of persons who are involved in the management, operation, and use of Federal computer systems, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. [40 U.S.C. 1441 note] SHORT TITLE.

[Section 1 was repealed by section 6(b) of P.L. 107-217 (116 Stat. 1304).]

### SEC. 2. [40 U.S.C. 1441 note] PURPOSE.

[Section 2 was repealed by section 6(b) of P.L. 107-217 (116 Stat. 1304).]

### SEC. 3. ESTABLISHMENT OF COMPUTER STANDARDS PROGRAM.

The Act of March 3, 1901 (15 U.S.C. 271-278h), is amended—

(1) in section 2(f), by striking out “and” at the end of paragraph (18), by striking out the period at the end of paragraph (19) and inserting in lieu thereof: “; and”, and by inserting after such paragraph the following:

“(20) the study of computer systems (as that term is defined in section 20(d) of this Act) and their use to control machinery and processes.”;

(2) by redesignating section 20 as section 22, and by inserting after section 19 the following new sections:

“SEC. 20. (a) The National Bureau of Standards shall—

“(1) have the mission of developing standards, guidelines, and associated methods and techniques for computer systems;

“(2) except as described in paragraph (3) of this subsection (relating to security standards), develop uniform standards and guidelines for Federal computer systems, except those systems excluded by section 2315 of title 10, United States Code, or section 3502(2) of title 44, United States Code;

“(3) have responsibility within the Federal Government for developing technical, management, physical, and administrative standards and guidelines for the cost-effective security and privacy of sensitive information in Federal computer systems except—

“(A) those systems excluded by section 2315 of title 10, United States Code, or section 3502(2) of title 44, United States Code; and

“(B) those systems which are protected at all times by procedures established for information which has been specifically authorized under criteria established by an Execu-

tive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy, the primary purpose of which standards and guidelines shall be to control loss and unauthorized modification or disclosure of sensitive information in such systems and to prevent computer-related fraud and misuse;

“(4) submit standards and guidelines developed pursuant to paragraphs (2) and (3) of this subsection, along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 111(d) of the Federal Property and Administrative Services Act of 1949;

“(5) develop guidelines for use by operators of Federal computer systems that contain sensitive information in training their employees in security awareness and accepted security practice, as required by section 5 of the Computer Security Act of 1987; and

“(6) develop validation procedures for, and evaluate the effectiveness of, standards and guidelines developed pursuant to paragraphs (1), (2), and (3) of this subsection through research and liaison with other government and private agencies.

“(b) In fulfilling subsection (a) of this section, the National Bureau of Standards is authorized—

“(1) to assist the private sector, upon request, in using and applying the results of the programs and activities under this section;

“(2) to make recommendations, as appropriate, to the Administrator of General Services on policies and regulations proposed pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949;

“(3) as requested, to provide to operators of Federal computer systems technical assistance in implementing the standards and guidelines promulgated pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949;

“(4) to assist, as appropriate, the Office of Personnel Management in developing regulations pertaining to training, as required by section 5 of the Computer Security Act of 1987;

“(5) to perform research and to conduct studies, as needed, to determine the nature and extent of the vulnerabilities of, and to devise techniques for the cost-effective security and privacy of sensitive information in Federal computer systems; and

“(6) to coordinate closely with other agencies and offices (including, but not limited to, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, the Office of Technology Assessment, and the Office of Management and Budget)—

“(A) to assure maximum use of all existing and planned programs, materials, studies, and reports relating to computer systems security and privacy, in order to avoid unnecessary and costly duplication of effort; and

“(B) to assure, to the maximum extent feasible, that standards developed pursuant to subsection (a) (3) and (5) are consistent and compatible with standards and procedures developed for the protection of information in Fed-

eral computer systems which is authorized under criteria established by Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

“(c) For the purposes of—

“(1) developing standards and guidelines for the protection of sensitive information in Federal computer systems under subsections (a)(1) and (a)(3), and

“(2) performing research and conducting studies under subsection (b)(5),

the National Bureau of Standards shall draw upon computer system technical security guidelines developed by the National Security Agency to the extent that the National Bureau of Standards determines that such guidelines are consistent with the requirements for protecting sensitive information in Federal computer systems.

“(d) As used in this section—

“(1) the term ‘computer system’—

“(A) means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information; and

“(B) includes—

“(i) computers;

“(ii) ancillary equipment;

“(iii) software, firmware, and similar procedures;

“(iv) services, including support services; and

“(v) related resources as defined by regulations issued by the Administrator for General Services pursuant to section 111 of the Federal Property and Administrative Services Act of 1949;

“(2) the term ‘Federal computer system’—

“(A) means a computer system operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer system) on behalf of the Federal Government to accomplish a Federal function; and

“(B) includes automatic data processing equipment as that term is defined in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949;

“(3) the term ‘operator of a Federal computer system’ means a Federal agency, contractor of a Federal agency, or other organization that processes information using a computer system on behalf of the Federal Government to accomplish a Federal function;

“(4) the term ‘sensitive information’ means any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act

of Congress to be kept secret in the interest of national defense or foreign policy; and

“(5) the term ‘Federal agency’ has the meaning given such term by section 3(b) of the Federal Property and Administrative Services Act of 1949.

“SEC. 21. (a) There is hereby established a Computer System Security and Privacy Advisory Board within the Department of Commerce. The Secretary of Commerce shall appoint the chairman of the Board. The Board shall be composed of twelve additional members appointed by the Secretary of Commerce as follows:

“(1) four members from outside the Federal Government who are eminent in the computer or telecommunications industry, at least one of whom is representative of small or medium sized companies in such industries;

“(2) four members from outside the Federal Government who are eminent in the fields of computer or telecommunications technology, or related disciplines, but who are not employed by or representative of a producer of computer or telecommunications equipment; and

“(3) four members from the Federal Government who have computer systems management experience, including experience in computer systems security and privacy, at least one of whom shall be from the National Security Agency.

“(b) The duties of the Board shall be—

“(1) to identify emerging managerial, technical, administrative, and physical safeguard issues relative to computer systems security and privacy;

“(2) to advise the Bureau of Standards and the Secretary of Commerce on security and privacy issues pertaining to Federal computer systems; and

“(3) to report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

“(c) The term of office of each member of the Board shall be four years, except that—

“(1) of the initial members, three shall be appointed for terms of one year, three shall be appointed for terms of two years, three shall be appointed for terms of three years, and three shall be appointed for terms of four years; and

“(2) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.

“(d) The Board shall not act in the absence of a quorum, which shall consist of seven members.

“(e) Members of the Board, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise performing duties at the request of the Board Chairman while away from their homes or a regular place of business, may be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

“(f) To provide the staff services necessary to assist the Board in carrying out its functions, the Board may utilize personnel from

the National Bureau of Standards or any other agency of the Federal Government with the consent of the head of the agency.

“(g) As used in this section, the terms ‘computer system’ and ‘Federal computer system’ have the meanings given in section 20(d) of this Act.”; and

(3) by adding at the end thereof the following new section:  
“SEC. 23. This Act may be cited as the National Bureau of Standards Act.”.

#### SEC. 4. AMENDMENT TO BROOKS ACT.

Section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) is amended to read as follows:

“(d)(1) The Secretary of Commerce shall, on the basis of standards and guidelines developed by the National Bureau of Standards pursuant to section 20(a) (2) and (3) of the National Bureau of Standards Act, promulgate standards and guidelines pertaining to Federal computer systems, making such standards compulsory and binding to the extent to which the Secretary determines necessary to improve the efficiency of operation or security and privacy of Federal computer systems. The President may disapprove or modify such standards and guidelines if he determines such action to be in the public interest. The President’s authority to disapprove or modify such standards and guidelines may not be delegated. Notice of such disapproval or modification shall be submitted promptly to the Committee on Government Operations<sup>1</sup> of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register. Upon receiving notice of such disapproval or modification, the Secretary of Commerce shall immediately rescind or modify such standards or guidelines as directed by the President.

“(2) The head of a Federal agency may employ standards for the cost-effective security and privacy of sensitive information in a Federal computer system within or under the supervision of that agency that are more stringent than the standards promulgated by the Secretary of Commerce, if such standards contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Secretary of Commerce.

“(3) The standards determined to be compulsory and binding may be waived by the Secretary of Commerce in writing upon a determination that compliance would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or cause a major adverse financial impact on the operator which is not offset by Government-wide savings. The Secretary may delegate to the head of one or more Federal agencies authority to waive such standards to the extent to which the Secretary determines such action to be necessary and desirable to allow for timely and effective implementation of Federal computer systems standards. The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, United States Code. Notice of each such waiver and delegation

<sup>1</sup>The Committee on Government Operations was renamed to the Committee on Government Reform and Oversight by H. Res. 6 in the 104th Congress, and renamed the Committee on Government Reform by H. Res. 5 in the 106th Congress.

shall be transmitted promptly to the Committee on Government Operations<sup>1</sup> of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

“(4) The Administrator shall revise the Federal information resources management regulations (41 CFR ch. 201) to be consistent with the standards and guidelines promulgated by the Secretary of Commerce under this subsection.

“(5) As used in this subsection, the terms ‘Federal computer system’ and ‘operator of a Federal computer system’ have the meanings given in section 20(d) of the National Bureau of Standards Act.”.

**SEC. 5. [40 U.S.C. 1441 note] FEDERAL COMPUTER SYSTEM SECURITY TRAINING.**

[Section 5 was repealed by section 6(b) of P.L. 107-217 (116 Stat. 1304).]

**SEC. 6. [40 U.S.C. 1441 note] ADDITIONAL RESPONSIBILITIES FOR COMPUTER SYSTEMS SECURITY AND PRIVACY.**

[Section 6 was repealed by section 6(b) of P.L. 107-217 (116 Stat. 1304).]

**SEC. 7. [40 U.S.C. 1441 note] DEFINITIONS.**

[Section 7 was repealed by section 6(b) of P.L. 107-217 (116 Stat. 1304).]

**SEC. 8. [40 U.S.C. 1441 note] RULES OF CONSTRUCTION OF ACT.**

[Section 8 was repealed by section 6(b) of P.L. 107-217 (116 Stat. 1304).]

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<sup>1</sup>The Committee on Government Operations was renamed to the Committee on Government Reform and Oversight by H. Res. 6 in the 104th Congress, and renamed the Committee on Government Reform by H. Res. 5 in the 106th Congress.

**SECTION 618 OF THE TREASURY, POSTAL SERVICE AND  
GENERAL GOVERNMENT APPROPRIATIONS ACT, 1990**

SEC. 618. No funds appropriated in this or any other Act for fiscal year 1990 may be used to implement or enforce the agreements in Standard Forms 312 and 4355 of the Government or any other nondisclosure policy, form or agreement if such policy, form or agreement:

(1) concerns information other than that specifically marked as classified; or, unmarked but known by the employee to be classified; or, unclassified but known by the employee to be in the process of a classification determination;

(2) contains the term classifiable;

(3) directly or indirectly obstructs, by requirement of prior written authorization, limitation of authorized disclosure, or otherwise, the right of any individual to petition or communicate with Members of Congress in a secure manner as provided by the rules and procedures of the Congress;

(4) interferes with the right of the Congress to obtain executive branch information in a secure manner as provided by the rules and procedures of the Congress;

(5) imposes any obligations or invokes any remedies inconsistent with statutory law:

*Provided*, That nothing in this section shall affect the enforcement of those aspects of such nondisclosure policy, form or agreement that do not fall within subsection (1)–(5) of this section.



## C. CONGRESSIONAL OVERSIGHT

### TITLE V OF THE NATIONAL SECURITY ACT OF 1947 (ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES)

#### TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES<sup>1</sup>

##### GENERAL CONGRESSIONAL OVERSIGHT PROVISIONS

SEC. 501. [50 U.S.C. 413] (a)(1) The President shall ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity as required by this title.

(2) Nothing in this title shall be construed as requiring the approval of the congressional intelligence committees as a condition precedent to the initiation of any significant anticipated intelligence activity.

(b) The President shall ensure that any illegal intelligence activity is reported promptly to the congressional intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity.

(c) The President and the congressional intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of this title.

(d) The House of Representatives and the Senate shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information, and all information relating to intelligence sources and methods, that is furnished to the congressional intelligence committees or to Members of Congress under this title. Such procedures shall be established in consultation with the Director of Central Intelligence. In accordance with such procedures, each of the congressional intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) Nothing in this Act shall be construed as authority to withhold information from the congressional intelligence committees on the grounds that providing the information to the congressional intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

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<sup>1</sup>This title is also set out *ante* at page 42 as part of the National Security Act of 1947.

(f) As used in this section, the term “intelligence activities” includes covert actions as defined in section 503(e), and includes financial intelligence activities.

REPORTING OF INTELLIGENCE ACTIVITIES OTHER THAN COVERT  
ACTIONS

SEC. 502. [50 U.S.C. 413a] (a) IN GENERAL.—To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—

(1) keep the congressional intelligence committees fully and currently informed of all intelligence activities, other than a covert action (as defined in section 503(e)), which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity and any significant intelligence failure; and

(2) furnish the congressional intelligence committees any information or material concerning intelligence activities, other than covert actions, which is within their custody or control, and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.

(b) FORM AND CONTENTS OF CERTAIN REPORTS.—Any report relating to a significant anticipated intelligence activity or a significant intelligence failure that is submitted to the congressional intelligence committees for purposes of subsection (a)(1) shall be in writing, and shall contain the following:

(1) A concise statement of any facts pertinent to such report.

(2) An explanation of the significance of the intelligence activity or intelligence failure covered by such report.

(c) STANDARDS AND PROCEDURES FOR CERTAIN REPORTS.—The Director of Central Intelligence, in consultation with the heads of the departments, agencies, and entities referred to in subsection (a), shall establish standards and procedures applicable to reports covered by subsection (b).

PRESIDENTIAL APPROVAL AND REPORTING OF COVERT ACTIONS

SEC. 503. [50 U.S.C. 413b] (a) The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government unless the President determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions:

(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously

made and shall be reduced to a written finding as soon as possible but in no event more than 48 hours after the decision is made.

(2) Except as permitted by paragraph (1), a finding may not authorize or sanction a covert action, or any aspect of any such action, which already has occurred.

(3) Each finding shall specify each department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such action. Any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a covert action shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency, or entity, to govern such participation.

(4) Each finding shall specify whether it is contemplated that any third party which is not an element of, or a contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action concerned on behalf of the United States.

(5) A finding may not authorize any action that would violate the Constitution or any statute of the United States.

(b) To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and entities of the United States Government involved in a covert action—

(1) shall keep the congressional intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including significant failures; and

(2) shall furnish to the congressional intelligence committees any information or material concerning covert actions which is in the possession, custody, or control of any department, agency, or entity of the United States Government and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.

(c)(1) The President shall ensure that any finding approved pursuant to subsection (a) shall be reported to the congressional intelligence committees as soon as possible after such approval and before the initiation of the covert action authorized by the finding, except as otherwise provided in paragraph (2) and paragraph (3).

(2) If the President determines that it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, the finding may be reported to the chairmen and ranking minority members of the congressional intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the

Senate, and such other member or members of the congressional leadership as may be included by the President.

(3) Whenever a finding is not reported pursuant to paragraph (1) or (2) of this section, the President shall fully inform the congressional intelligence committees in a timely fashion and shall provide a statement of the reasons for not giving prior notice.

(4) In a case under paragraph (1), (2), or (3), a copy of the finding, signed by the President, shall be provided to the chairman of each congressional intelligence committee. When access to a finding is limited to the Members of Congress specified in paragraph (2), a statement of the reasons for limiting such access shall also be provided.

(d) The President shall ensure that the congressional intelligence committees, or, if applicable, the Members of Congress specified in subsection (c)(2), are notified of any significant change in a previously approved covert action, or any significant undertaking pursuant to a previously approved finding, in the same manner as findings are reported pursuant to subsection (c).

(e) As used in this title, the term “covert action” means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include—

(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

(2) traditional diplomatic or military activities or routine support to such activities;

(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

(4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.

(f) No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

#### FUNDING OF INTELLIGENCE ACTIVITIES

SEC. 504. [50 U.S.C. 414] (a) Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 503 of this Act concerning any significant anticipated intelligence activity, the Director of Central Intelligence has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

- (A) the activity to be funded is a higher priority intelligence or intelligence-related activity;
- (B) the need for funds for such activity is based on unforeseen requirements; and
- (C) the Director of Central Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;
- (4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.
- (b) Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.
- (c) No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 503(e), unless and until a Presidential finding required by subsection (a) of section 503 has been signed or otherwise issued in accordance with that subsection.
- (d)(1) Except as otherwise specifically provided by law, funds available to an intelligence agency that are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if those funds are used for activities reported to the appropriate congressional committees pursuant to procedures which identify—
- (A) the types of activities for which nonappropriated funds may be expended; and
- (B) the circumstances under which an activity must be reported as a significant anticipated intelligence activity before such funds can be expended.
- (2) Procedures for purposes of paragraph (1) shall be jointly agreed upon by the congressional intelligence committees and, as appropriate, the Director of Central Intelligence or the Secretary of Defense.
- (e) As used in this section—
- (1) the term “intelligence agency” means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;
- (2) the term “appropriate congressional committees” means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate; and
- (3) the term “specifically authorized by the Congress” means that—
- (A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.

NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES  
AND DEFENSE SERVICES

SEC. 505. [50 U.S.C. 415] (a)(1) The transfer of a defense article or defense service, or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services, exceeding \$1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of this title.

(2) Paragraph (1) does not apply if—

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(a) of that title), or the Federal Property and Administrative Services Act of 1949, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(b) As used in this section—

(1) the term “intelligence agency” means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the terms “defense articles” and “defense services” mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

(3) the term “transfer” means—

(A) in the case of defense articles, the transfer of possession of those articles; and

(B) in the case of defense services, the provision of those services; and

(4) the term “value” means—

(A) in the case of defense articles, the greater of—

(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

(ii) the replacement cost; and

(B) in the case of defense services, the full cost to the Government of providing the services.

SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE

SEC. 506. (a) **[50 U.S.C. 415a]** IN GENERAL.—The budget justification materials submitted to Congress in support of the budget of the President for a fiscal year that is submitted to Congress under section 1105(a) of title 31, United States Code, shall set forth separately the aggregate amount requested for that fiscal year for the National Foreign Intelligence Program for each of the following:

- (1) Counterterrorism.
- (2) Counterproliferation.
- (3) Counternarcotics.
- (4) Counterintelligence.

(b) ELECTION OF CLASSIFIED OR UNCLASSIFIED FORM.—Amounts set forth under subsection (a) may be set forth in unclassified form or classified form, at the election of the Director of Central Intelligence.

DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMIANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES

SEC. 507. **[50 U.S.C. 415b]** (a) ANNUAL REPORTS.—(1) The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1)(A):

(A) The annual evaluation of the performance and responsiveness of certain elements of the intelligence community required by section 105(d).

(B) The annual report on intelligence required by section 109.

(C) The annual report on intelligence community cooperation with Federal law enforcement agencies required by section 114(a)(2).

(D) The annual report on the protection of the identities of covert agents required by section 603.

(E) The annual report of the Inspectors General of the intelligence community on proposed resources and activities of their offices required by section 8H(g) of the Inspector General Act of 1978.

(F) The annual report on commercial activities as security for intelligence collection required by section 437(c) of title 10, United States Code.

(G) The annual report on expenditures for postemployment assistance for terminated intelligence employees required by section 1611(e)(2) of title 10, United States Code.

(H) The annual update on foreign industrial espionage required by section 809(b) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103-359; 50 U.S.C. App. 2170b(b)).

(I) The annual report on coordination of counterintelligence matters with the Federal Bureau of Investigation required by section 811(c)(6) of the Counterintelligence and Security Enhancements Act of 1994 (50 U.S.C. 402a(c)(6)).

(J) The annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds

in the United States capital markets required by section 827 of the Intelligence Authorization Act for Fiscal Year 2003.

(K) The annual report on certifications for immunity in interdiction of aircraft engaged in illicit drug trafficking required by section 1012(c)(2) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291–4(c)(2)).

(L) The annual report on exceptions to consumer disclosure requirements for national security investigations under section 604(b)(4)(E) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)(E)).

(M) The annual report on activities under the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102–183; 50 U.S.C. 1901 et seq.) required by section 806(a) of that Act (50 U.S.C. 1906(a)).

(N) The annual report on hiring and retention of minority employees in the intelligence community required by section 114(c).

(2) The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1)(B):

(A) The annual report on the safety and security of Russian nuclear facilities and nuclear military forces required by section 114(b).

(B) The annual report on the threat of attack on the United States from weapons of mass destruction required by section 114(d).

(C) The annual report on covert leases required by section 114(e).

(D) The annual report on improvements of the financial statements of the intelligence community for auditing purposes required by section 114A.

(E) The annual report on activities of personnel of the Federal Bureau of Investigation outside the United States required by section 540C(c)(2) of title 28, United States Code.

(F) The annual report on intelligence activities of the People's Republic of China required by section 308(c) of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 50 U.S.C. 402a note).

(G) The annual report on counterdrug intelligence matters required by section 826 of the Intelligence Authorization Act for Fiscal Year 2003.

(b) SEMIANNUAL REPORTS.—The dates for the submittal to the congressional intelligence committees of the following semiannual reports shall be the dates each year provided in subsection (c)(2):

(1) The periodic reports on intelligence provided to the United Nations required by section 112(b).

(2) The semiannual reports on the Office of the Inspector General of the Central Intelligence Agency required by section 17(d)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(1)).

(3) The semiannual reports on decisions not to prosecute certain violations of law under the Classified Information Procedures Act (18 U.S.C. App.) as required by section 13 of that Act.

(4) The semiannual reports on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions required by section 721(b) of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104-293; 50 U.S.C. 2366(b)).

(5) The semiannual reports on the activities of the Diplomatic Telecommunications Service Program Office (DTS-PO) required by section 322(a)(6)(D)(ii) of the Intelligence Authorization Act for Fiscal Year 2001 (22 U.S.C. 7302(a)(6)(D)(ii)).

(6) The semiannual reports on the disclosure of information and consumer reports to the Federal Bureau of Investigation for counterintelligence purposes required by section 624(h)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681u(h)(2)).

(7) The semiannual provision of information on requests for financial information for foreign counterintelligence purposes required by section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)).

(8) The semiannual report on financial intelligence on terrorist assets required by section 118.

(c) SUBMITTAL DATES FOR REPORTS.—(1)(A) Except as provided in subsection (d), each annual report listed in subsection (a)(1) shall be submitted not later than February 1.

(B) Except as provided in subsection (d), each annual report listed in subsection (a)(2) shall be submitted not later than December 1.

(2) Except as provided in subsection (d), each semiannual report listed in subsection (b) shall be submitted not later than February 1 and August 1.

(d) POSTPONEMENT OF SUBMITTAL.—(1) Subject to paragraph (3), the date for the submittal of—

(A) an annual report listed in subsection (a)(1) may be postponed until March 1;

(B) an annual report listed in subsection (a)(2) may be postponed until January 1; and

(C) a semiannual report listed in subsection (b) may be postponed until March 1 or September 1, as the case may be, if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

(2)(A) Notwithstanding any other provision of law and subject to paragraph (3), the date for the submittal to the congressional intelligence committees of any report described in subparagraph (B) may be postponed by not more than 30 days from the date otherwise specified in the provision of law for the submittal of such report if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

(B) A report described in this subparagraph is any report on intelligence or intelligence-related activities of the United States Government that is submitted under a provision of law requiring the submittal of only a single report.

(3)(A) The date for the submittal of a report whose submittal is postponed under paragraph (1) or (2) may be postponed beyond the time provided for the submittal of such report under such para-

graph if the official required to submit such report submits to the congressional intelligence committees a written certification that preparation and submittal of such report at such time will impede the work of officers or employees of the intelligence community in a manner that will be detrimental to the national security of the United States.

(B) A certification with respect to a report under subparagraph (A) shall include a proposed submittal date for such report, and such report shall be submitted not later than that date.

## **SECTION 654 OF THE FOREIGN ASSISTANCE ACT OF 1961**

SEC. 654. [22 U.S.C. 2414] PRESIDENTIAL FINDINGS AND DETERMINATIONS.—(a) In any case in which the President is required to make a report to the Congress, or to any committee or officer of either House of Congress, concerning any finding or determination under any provision of this Act, the Foreign Military Sales Act, or the Foreign Assistance and Related Programs Appropriation Act for each fiscal year, that finding or determination shall be reduced to writing and signed by the President.

(b) No action shall be taken pursuant to any such finding or determination prior to the date on which that finding or determination has been reduced to writing and signed by the President.

(c) Each such finding or determination shall be published in the Federal Register as soon as practicable after it has been reduced to writing and signed by the President. In any case in which the President concludes that such publication would be harmful to the national security of the United States, only a statement that a determination or finding has been made by the President, including the name and section of the Act under which it was made, shall be published.

(d) No committee or officer of either House of Congress shall be denied any requested information relating to any finding or determination which the President is required to report to the Congress, or to any committee or officer of either House of Congress, under any provision of this Act, the Foreign Military Sales Act, or the Foreign Assistance and Related Programs Appropriation Act for each fiscal year even though such report has not yet been transmitted to the appropriate committee or officer of either House of Congress.

**SECTION 112b OF TITLE 1, UNITED STATES CODE  
(UNITED STATES INTERNATIONAL AGREEMENTS)  
(THE "CASE ACT")**

**§ 112b. United States international agreements; transmission to Congress**

(a) The Secretary of State shall transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be reduced to writing), other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President. Any department or agency of the United States Government which enters into any international agreement on behalf of the United States shall transmit to the Department of State the text of such agreement not later than twenty days after such agreement has been signed.

(b) Not later than March 1, 1979, and at yearly intervals thereafter, the President shall, under his own signature, transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report with respect to each international agreement which, during the preceding year, was transmitted to the Congress after the expiration of the 60-day period referred to in the first sentence of subsection (a), describing fully and completely the reasons for the late transmittal.

(c) Notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State. Such consultation may encompass a class of agreements rather than a particular agreement.

(d) The Secretary of State shall determine for and within the executive branch whether an arrangement constitutes an international agreement within the meaning of this section.

(e) The President shall, through the Secretary of State, promulgate such rules and regulations as may be necessary to carry out this section.

## **D. REGISTRATION LAWS <sup>1</sup>**

### **SECTION 951 OF TITLE 18, UNITED STATES CODE (AGENTS OF FOREIGN GOVERNMENTS)**

#### **§ 951. Agents of foreign governments**

(a) Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General if required in subsection (b), shall be fined under this title or imprisoned not more than ten years, or both.

(b) The Attorney General shall promulgate rules and regulations establishing requirements for notification.

(c) The Attorney General shall, upon receipt, promptly transmit one copy of each notification statement filed under this section to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General to do so shall not be a bar to prosecution under this section.

(d) For purposes of this section, the term “agent of a foreign government” means an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term does not include—

(1) a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State;

(2) any officially and publicly acknowledged and sponsored official or representative of a foreign government;

(3) any officially and publicly acknowledged and sponsored member of the staff of, or employee of, an officer, official, or representative described in paragraph (1) or (2), who is not a United States citizen; or

(4) any person engaged in a legal commercial transaction.

(e) Notwithstanding paragraph (d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government for purposes of this section if—

(1) such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and

(2) such person—

(A) is an agent of Cuba or any other country that the President determines (and so reports to the Congress) poses a threat to the national security interest of the United States for purposes of this section, unless the At-

<sup>1</sup>See also chapter 7 of title II of the Immigration and Nationality Act, set out *post* at page 776.

torney General, after consultation with the Secretary of State, determines and so reports to the Congress that the national security or foreign policy interests of the United States require that the provisions of this section do not apply in specific circumstances to agents of such country; or

(B) has been convicted of, or has entered a plea of nolo contendere with respect to, any offense under section 792 through 799, 831, or 2381 of this title or under section 11 of the Export Administration Act of 1979, except that the provisions of this subsection shall not apply to a person described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of nolo contendere, as the case may be.

## FOREIGN AGENTS REGISTRATION ACT OF 1938

(Chapter 327; 52 Stat. 631; approved June 8, 1938)

AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### POLICY AND PURPOSE

It is hereby declared to be the policy and purpose of this Act to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in light of their associations and activities.

### DEFINITIONS

SECTION 1. [22 U.S.C. 611] As used in and for the purposes of this Act—

(a) The term “person” includes an individual, partnership, association, corporation, organization, or any other combination of individuals;

(b) The term “foreign principal” includes—

(1) a government of a foreign country and a foreign political party;

(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(3) a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(c) Except<sup>1</sup> as provided in subsection (d) hereof, the term “agent of a foreign principal” means—

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed,

<sup>1</sup>So in original.

or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages with the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

(d) The term “agent of a foreign principal” does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of title 39, United States Code,<sup>1</sup> published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in section 1(b) hereof, or by any agent of a foreign principal required to register under this Act;

(e) The term “government of a foreign country” includes any person or group of persons exercising sovereign *de facto* or *de jure* political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign *de facto* or *de jure* authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States;

(f) The term “foreign political party” includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or subdivision thereof, or the furtherance or influencing of the po-

<sup>1</sup> So in original. Probably should be a reference to section 3685 of title 39, United States Code.

litical or public interests, policies, or relations of a government of a foreign country or a subdivision thereof;

(g) The term "Public-relations counsel" includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal;

(h) The term "publicity agent" includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise;

(i) The term "information-service employee" includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;

(j) **[Repealed by section 9(1)(A) of Public Law 104-65]**

(k) The term "registration statement" means the registration statement required to be filed with the Attorney General under section 2(a) hereof, and any supplements thereto required to be filed under section 2(b) hereof, and includes all documents and papers required to be filed therewith or amendatory thereof or supplemental thereto, whether attached thereto or incorporated therein by reference;

(l) The term "American republic" includes any of the States which were signatory to the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940;

(m) The term "United States," when used in a geographical sense includes the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States;

(n) The term "prints" means newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogs, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds, and, in general, all impressions or reproductions obtained on paper or other material assimilable to paper, on parchment or on cardboard, by means of printing, engraving, lithography, autography, or any other easily recognizable mechanical process, with the exception of the copying press, stamps with movable or immovable type, and the typewriter;

(o) The term "political activities" means any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States

with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party;

(p) The term "political consultant" means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.

(q) **Repealed by section 9(1)(D) of Public Law 104-65**

#### REGISTRATION

SEC. 2. **[22 U.S.C. 612]** (a) No person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required by this section 2(a) and section 2(b) hereof or unless he is exempt from registration under the provisions of this Act. Except as hereinafter provided, every person who becomes an agent of a foreign principal shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General. The obligation of an agent of a foreign principal to file a registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal. The registration statement shall include the following which shall be regarded as material for the purposes of this Act:

(1) Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

(2) Status of the registrant; if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner and a true and complete copy of its articles of co-partnership; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation, association, constitution, and bylaws, and amendments thereto; a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control;

(3) A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each; unless, and to the extent, this requirement is waived in writing by the Attorney General; the name and address of every foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which

each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party, or by any other foreign principal;

(4) Copies of each written agreement, and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal, including a detailed statement of any such activity which is a political activity;

(5) The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each such foreign principal, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(6) A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder, including a detailed statement of any such activity which is a political activity;

(7) The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal; and the nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(8) A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection<sup>1</sup> with activities which require his registration hereunder and which have been undertaken by him either as a agent of a foreign principal or for himself or any other person or in connection with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions of money or other things of value made by him during the preceding sixty days (other than contributions the making of which is prohibited under the terms of section 613 of title 18, United States

<sup>1</sup> So in original. Probably should be "connection".

Code) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office;

(9) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;

(10) Such other statements, information, or documents pertinent to the purposes of this Act as the Attorney General, having due regard for the national security and the public interests, may from time to time require;

(11) Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(b) Every agent of a foreign principal who has filed a registration statement required by section 2(a) hereof shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth with respect to such preceding six months' period such facts as the Attorney General, having due regard for the national security and the public interest, may deem necessary to make the information required under section 2 hereof accurate, complete, and current with respect to such period. In connection with the information furnished under clauses (3), (4), and (9) of section 2(a) hereof, the registrant shall give notice to the Attorney General of any changes therein within ten days after such changes occur. If the Attorney General, having due regard for the national security and the public interest, determines that it is necessary to carry out the purposes of this Act, he may, in any particular case, require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

(c) The registration statement and supplements thereto shall be executed under oath as follows: If the registrant is an individual, by him; if the registrant is a partnership, by the majority of the members thereof; if the registrant is a person other than an individual or a partnership, by a majority of the officers thereof or persons performing the functions of officers or by a majority of the board of directors thereof or persons performing the functions of directors, if any.

(d) The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this Act and the regulations thereunder on the part of the registrant; nor shall it indicate that the Attorney General has in any way passed upon the merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this Act, for willful failure to file a registration statement or supplement thereto when due or for a willful false statement of a material fact therein or the willful omission of a material fact re-

quired to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(e) If any agent of a foreign principal, required to register under the provisions of this Act, has previously thereto registered with the Attorney General under the provisions of the Act of October 17, 1940 (54 Stat. 1201), the Attorney General, in order to eliminate inappropriate duplication, may permit the incorporation by reference in the registration statement or supplements thereto filed hereunder of any information or documents previously filed by such agent of a foreign principal under the provisions of the Act of October 17, 1940 (54 Stat. 1201).

(f) The Attorney General may, by regulation, provide for the exemption—

(1) from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this Act, and

(2) from the requirement of furnishing any of the information required by this section of any agent of a foreign principal, where by reason of the nature of the functions or activities of such person the Attorney General, having due regard for the national security and the public interest, determines that such registration, or the furnishing of such information, as the case may be, is not necessary to carry out the purposes of this Act.

#### EXEMPTIONS

SEC. 3. [22 U.S.C. 613] The requirements of section 2(a) hereof shall not apply to the following agents of foreign principals:

(a) A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;

(b) Any official of a foreign government, if such government is recognized by the United States, who is not a public-relations counsel, publicity agent, information-service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official;

(c) Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, publicity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee;

(d) Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 4),<sup>1</sup> and such rules and regulations as may be prescribed thereunder;

(e) Any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;

(f) Any person, or employee of such person, whose foreign principal is a government of a foreign country the defense of which the President deems vital to the defense of the United States while, (1) such person or employee engages only in activities which are in furtherance of the policies, public interest, or national defense both of such government and of the Government of the United States, and are not intended to conflict with any of the domestic or foreign policies of the Government of the United States, (2) each communication or expression by such person or employee which he intends to, or has reason to believe will, be published, disseminated, or circulated among any section of the public, or portion thereof, within the United States, is a part of such activities and is believed by such person to be truthful and accurate and the identity of such person as an agent of such foreign principal is disclosed therein, and (3) such government of a foreign country furnishes to the Secretary of State for transmittal to, and retention for the duration of this Act by, the Attorney General such information as to the identity and activities of such person or employee at such times as the Attorney General may require. Upon notice to the Government of which such person is an agent or to such person or employee, the Attorney General, having due regard for the public interest and national defense, may, with the approval of the Secretary of State, and shall, at the request of the Secretary of State, terminate in whole or in part the exemption herein of any such person or employee;

(g) Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided*, That for the purpose of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.

(h) Any agent of a person described in section 1(b)(2) or an entity described in section 1(b)(3) if the agent has engaged in lobbying activities and has registered under the Lobbying Disclosure Act of 1995 in connection with the agent's representation of such person or entity.

<sup>1</sup> Reference is to the Neutrality Act of 1939.

## FILING AND LABELING POLITICAL PROPAGANDA

SEC. 4. [22 U.S.C. 614] (a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any informational materials for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, file with the Attorney General two copies thereof.

(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any informational materials for or in the interests of such foreign principal without placing in such informational materials a conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal, and that additional information is on file with the Department of Justice, Washington, District of Columbia. The Attorney General may by rule define what constitutes a conspicuous statement for the purposes of this subsection.

(c) The copies of informational materials required by this Act to be filed with the Attorney General shall be available for public inspection under such regulations as he may prescribe.

(d) For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the Postmaster General are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined to be prohibited entry under the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688), and of all foreign prints excluded from the mails under authority of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230).

Notwithstanding the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688), and of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230), the Secretary of the Treasury is authorized to permit the entry and the Postmaster General is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

(e) It shall be unlawful for any person within the United States who is an agent of a foreign principal required to register under the provisions of this Act to transmit, convey, or otherwise furnish to any agency or official of the Government (including a Member or committee of either House of Congress) for or in the interests of such foreign principal any political propaganda or to request from any such agency or official for or in the interests of such foreign principal any information or advice with respect to any matter pertaining to the political or public interests, policies or relations of a foreign country or of a political party or pertaining to the foreign or domestic policies of the United States unless the propa-

ganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this Act.

(f) Whenever any agent of a foreign principal required to register under this Act appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony.

#### BOOKS AND RECORDS

SEC. 5. [22 U.S.C. 615] Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this Act, in accordance with such business and accounting practices, as the Attorney General having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act and shall preserve the same for a period of three years following the termination of such status. Until regulations are in effect under this section every agent of a foreign principal shall keep books of account and shall preserve all written records with respect to his activities. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

#### PUBLIC EXAMINATION OF OFFICIAL RECORD

SEC. 6. [22 U.S.C. 616] (a) The Attorney General shall retain in permanent form one copy of all registration statements furnished under this Act, and the same shall be public records and open to public examination and inspection at such reasonable hours, under such regulations, as the Attorney General may prescribe, and copies of the same shall be furnished to every applicant at such reasonable fee as the Attorney General may prescribe. The Attorney General may withdraw from public examination the registration statement and other statement of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under the provisions of this Act.

(b) The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or supplement thereto filed hereunder to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this Act.

(c) The Attorney General is authorized to furnish to departments and agencies in the executive branch and committees of the Congress such information obtained by him in the administration of this Act, including the names of registrants under this Act, copies of registration statements, or parts thereof, or other documents or information filed under this Act, as may be appropriate in the light of the purposes of this Act.

#### LIABILITY OF OFFICERS <sup>1</sup>

SEC. 7. [22 U.S.C. 617] Each officer, or person performing the functions of an officer, and each director or person performing the functions of a director, of an agent of a foreign principal which is not an individual shall be under obligation to cause such agent to execute and file a registration statement and supplements thereto as and when such filing is required under sections 2(a) and 2(b) hereof and shall also be under obligation to cause such agent to comply with all the requirements of sections 4(a), 4(b), and 5 and all other requirements of this Act. Dissolution of any organization acting as an agent of a foreign principal shall not relieve any officer, or person performing the functions of an officer, or any director, or person performing the functions of a director, from complying with the provisions of this section. In case of failure of any such agent of a foreign principal to comply with any of the requirements of this Act, each of its officers, or persons performing the functions of officers, and each of its directors, or persons performing the functions of directors, shall be subject to prosecution therefor.

#### ENFORCEMENT AND PENALTIES

SEC. 8. [22 U.S.C. 618] (a) Any person who—

(1) willfully violates any provisions of this Act or any regulations thereunder, or

(2) in any registration statement or supplement thereto or in any other documents filed with or furnished to the Attorney General under the provisions of this Act willfully makes a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material fact or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith not misleading, shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both, except that in case of a violation of subsection (b), (e), or (f) of section 4 or of subsection (g) or (h) of this section the punishment shall be a fine of not more than \$5,000 or imprisonment for not more than six months, or both.

(b) In any proceeding under this Act in which it is charged that a person is an agent of a foreign principal with respect to a foreign principal outside of the United States, proof of the specific identity of the foreign principal shall be permissible but not necessary.

<sup>1</sup>Section heading was omitted in the restatement of section 7 by section 2 of the Act of August 3, 1950 (64 Stat. 400).

(c) Any alien who shall be convicted of a violation of, or a conspiracy to violate, any provisions of this Act or any regulation thereunder shall be subject to removal pursuant to chapter 4 of title II of the Immigration and Nationality Act.

(d) **【Repealed by section 9(8)(B) of Public Law 104-65】**

(e) Failure to file any such registration statement or supplements thereto as is required by either section 2(a) or section 2(b) shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

(f) Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Act, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this Act or the regulations issued thereunder, or otherwise is in violation of the Act, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the Act or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper.

(g) If the Attorney General determines that a registration statement does not comply with the requirements of this Act or the regulations issued thereunder, he shall so notify the registrant in writing, specifying in what respects the statement is deficient. It shall be unlawful for any person to act as an agent of a foreign principal at any time ten days or more after receipt of such notification without filing an amended registration statement in full compliance with the requirements of this Act and the regulations issued thereunder.

(h) It shall be unlawful for any agent of a foreign principal required to register under this Act to be a party to any contract, agreement, or understanding, either expressed or implied, with such foreign principal pursuant to which the amount or payment of the compensation, fee, or other remuneration of such agent is contingent in whole or in part upon the success of any political activities carried on by such agent.

#### APPLICABILITY OF ACT

SEC. 9. **【22 U.S.C. 619】** This Act shall be applicable in the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States.

#### RULES AND REGULATIONS

SEC. 10. **【22 U.S.C. 620】** The Attorney General may at any time make, prescribe, amend, and rescind such rules, regulations, and forms as he may deem necessary to carry out the provisions of this Act.

SECTION<sup>1</sup> 11. [22 U.S.C. 621] REPORTS TO THE CONGRESS.—  
The Attorney General shall every six months report to the Congress concerning administration of this Act, including registrations filed pursuant to the Act, and the nature, sources and content of political propaganda disseminated and distributed.

SEPARABILITY OF PROVISIONS

SEC. 12. [22 U.S.C. 611 note] If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 13. [22 U.S.C. 611 note] This Act is in addition to and not in substitution for any other existing statute.

SHORT TITLE

SEC. 14. [22 U.S.C. 611 note] This Act may be cited as the "Foreign Agents Registration Act of 1938, as amended."

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<sup>1</sup> So in law. Probably should be "SEC."

**ACT OF AUGUST 1, 1956 (REGISTRATION OF CERTAIN  
PERSONS TRAINED IN FOREIGN ESPIONAGE SYSTEMS)**

(Chapter 849; 70 Stat. 899; approved August 1, 1956)

AN ACT To require the registration of certain persons who have knowledge of or have received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

[The first section consisted of an amendment to the Internal Security Act of 1950.]

SEC. 2. [50 U.S.C. 851] Except as provided in section 3 of this Act, every person who has knowledge of, or has received instruction or assignment in, the espionage, counterespionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, shall register with the Attorney General by filing with the Attorney General a registration statement in duplicate, under oath, prepared and filed in such manner and form, and containing such statements, information, or documents pertinent to the purposes and objectives of this Act as the Attorney General, having due regard for the national security and the public interest, by regulations prescribes.

SEC. 3. [50 U.S.C. 852] The registration requirements of section 2 of this Act do not apply to any person—

(a) who has obtained knowledge of or received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party by reason of civilian, military, or police service or employment with the United States Government, the governments of the several States, their political subdivisions, the District of Columbia, the Territories, or the Canal Zone;

(b) who has obtained such knowledge solely by reason of academic or personal interest not under the supervision of or in preparation for service with the government of a foreign country or a foreign political party;

(c) who has made full disclosure of such knowledge, instruction, or assignment to officials within an agency of the United States Government having responsibilities in the field of intelligence, which disclosure has been made a matter of record in the files of such agency, and concerning whom a written determination has been made by the Attorney General or the Director of Central Intelligence that registration would not be in the interest of national security;

(d) whose knowledge of, or receipt of instruction or assignment in, the espionage, counterespionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, is a matter of record in the files of an agency

of the United States Government having responsibilities in the field of intelligence and concerning whom a written determination is made by the Attorney General or the Director of Central Intelligence, based on all information available, that registration would not be in the interest of national security;

(e) who is a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State, while he is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer, and any member of his immediate family who resides with him;

(f) who is an official of a foreign government recognized by the United States, whose name and status and the character of whose duties as such official are of record in the Department of State, and while he is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official, and any member of his immediate family who resides with him;

(g) who is a member of the staff of or employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, and whose name and status and the character of whose duties as such member or employee are a matter of record in the Department of State, while he is engaged exclusively in the performance of activities recognized by the Department of State as being within the scope of the functions of such member or employee;

(h) who is an officially acknowledged and sponsored representative of a foreign government and is in the United States on an official mission for the purpose of conferring or otherwise cooperating with United States intelligence or security personnel;

(i) who is a civilian or one of the military personnel of a foreign armed service coming to the United States pursuant to arrangements made under a mutual defense treaty or agreement, or who has been invited to the United States at the request of an agency of the United States Government; or

(j) who is a person designated by a foreign government to serve as its representative in or to an international organization in which the United States participates or is an officer or employee of such an organization or who is a member of the immediate family of, and resides with, such a representative, officer, or employee.

SEC. 4. [50 U.S.C. 853] The Attorney General shall retain in permanent form one copy of all registration statements filed under this Act. They shall be public records and open to public examination at such reasonable hours and under such regulations as the Attorney General prescribes, except that the Attorney General, having due regard for the national security and public interest, may withdraw any registration statement from public examination.

SEC. 5. [50 U.S.C. 854] The Attorney General may at any time, make, prescribe, amend, and rescind such rules, regulations, and forms as he deems necessary to carry out the provisions of this Act.

**SEC. 6. [50 U.S.C. 855]** (a) Whoever willfully violates any provision of this Act or any regulation thereunder, or in any registration statement willfully make a false statement of a material fact or willfully omits any material fact, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(b) Any alien convicted of a violation of this Act or any regulation thereunder is subject to deportation in the manner provided by chapter 4 of title II of the Immigration and Nationality Act.

**SEC. 7. [50 U.S.C. 856]** Failure to file a registration statement as required by this Act is a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

**SEC. 8. [50 U.S.C. 857]** Compliance with the registration provisions of this Act does not relieve any person from compliance with any other applicable registration statute.

**SEC. 9. [50 U.S.C. 851 note]** If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, is not affected thereby.

**SEC. 10. [50 U.S.C. 858]** This Act applies to and within the Canal Zone.

## E. IMMIGRATION LAWS

### SELECTED PROVISIONS OF THE IMMIGRATION AND NATIONALITY ACT

(Act of June 27, 1952; 66 stat. 163; approved June 27, 1952)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act" [8 U.S.C. 1101 note].

\* \* \* \* \*

#### TITLE I—GENERAL

##### DEFINITIONS

SECTION 101. [8 U.S.C. 1101] (a) As used in this Act—

(1) The term "administrator" means the official designated by the Secretary of State pursuant to section 104(b) of this Act.

(2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

\* \* \* \* \*

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

\* \* \* \* \*

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who

has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

\* \* \* \* \*

(e) For the purpose of this Act—

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

\* \* \* \* \*

#### APPLICABILITY OF TITLE II TO CERTAIN NONIMMIGRANTS

SEC. 102. [8 U.S.C. 1102] Except as otherwise provided in this Act, for so long as they continue in the nonimmigrant classes enumerated in this section, the provisions of this Act relating to ineligibility to receive visas and the removal of aliens shall not be construed to apply to nonimmigrants—

(1) within the class described in paragraph (15)(A)(i) of section 101(a), except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraph (15)(A)(i), and, under such rules and regulations as the President may deem to be necessary, the provisions of subparagraphs (A) through (C) of section 212(a)(3);

(2) within the class described in paragraph (15)(G)(i) of section 101(a), except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifica-

tions under such paragraph (15)(G)(i), and the provisions of subparagraphs (A) through (C) of section 212(a)(3); and

(3) within the classes described in paragraphs (15)(A)(ii), (15)(G)(ii), (15)(G)(iii), or (15)(G)(iv) of section 101(a), except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraphs, and the provisions of subparagraphs (A) through (C) of section 212(a)(3).

\* \* \* \* \*

#### LIAISON WITH INTERNAL SECURITY OFFICERS; DATA EXCHANGE

SEC. 105. [8 U.S.C. 1105] (a) The Commissioner and the Administrator shall have authority to maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and the Central Intelligence Agency and with other internal security officers of the Government for the purpose of obtaining and exchanging information for use in enforcing the provisions of this Act in the interest of the internal and border security of the United States. The Commissioner and the Administrator shall maintain direct and continuous liaison with each other with a view to a coordinated, uniform, and efficient administration of this Act, and all other immigration and nationality laws.

(b)(1) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purpose of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file.

(2) Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge.

(3) The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon with the agency receiving the access. Upon receipt of such updated extracts, the receiving agency shall make corresponding updates to its database and destroy previously provided extracts.

(4) Access to an extract does not entitle the Department of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

(c) The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of a more cost-effective and efficient means of sharing the information.

(d) For purposes of administering this section, the Department of State shall, prior to receiving access to NCIC data but not later

than 4 months after the date of enactment of this subsection, promulgate final regulations—

(1) to implement procedures for the taking of fingerprints; and

(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—

(A) to limit the redissemination of such information;

(B) to ensure that such information is used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States;

(C) to ensure the security, confidentiality, and destruction of such information; and

(D) to protect any privacy rights of individuals who are subjects of such information.

\* \* \* \* \*

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

\* \* \* \* \*

ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES

SEC. 207. [8 U.S.C. 1157] (a) \* \* \*

\* \* \* \* \*

(c)(1) Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act.

\* \* \* \* \*

(3) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking admission to the United States under this subsection, and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation. The Attorney General shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

\* \* \* \* \*

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL  
CONTROL OF CITIZENS AND ALIENS

\* \* \* \* \*

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND  
INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. [8 U.S.C. 1182] (a)<sup>1</sup> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act,<sup>2</sup> aliens who are inadmissible under the following paragraphs are ineligible<sup>3</sup> to receive visas and ineligible to be admitted to the United States:

(1) HEALTH-RELATED GROUNDS.—

(A) IN GENERAL.—Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome,

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may

<sup>1</sup>Subsection (a) was revised in its entirety by section 601(a) of the Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990, 104 Stat. 5067), effective June 1, 1991, under section 601(e)(1) of that Act.

<sup>2</sup>Section 7 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h) provides as follows:  
Sec. 7. Whenever the Director [of Central Intelligence], the Attorney General and the Commissioner of Immigration [and Naturalization] shall determine that the admission of a particular alien into the United States for permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be admitted to the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations, or to the failure to comply with such laws and regulations pertaining to admissibility: *Provided*, That the number of aliens and members of their immediate families admitted to the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year.

<sup>3</sup>Section 4 of the Atomic Weapons and Special Nuclear Materials Rewards Act (50 U.S.C. 47e) provides as follows:

Sec. 4. If the information leading to an award under section 3 [viz., concerning illegal introduction, manufacture, acquisition, and export of special nuclear material or atomic weapons or conspiracies related thereto] is furnished by an alien, the Secretary of State, the Attorney General, and the Director of Central Intelligence, acting jointly, may determine that the entry of such alien into the United States is in the public interest and, in that event, such alien and the members of his immediate family may receive immigrant visas and may be admitted to the United States for permanent residence, notwithstanding the requirements of the Immigration and Nationality Act.

pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissibility.

(B) WAIVER AUTHORIZED.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

(C) EXCEPTION FROM IMMUNIZATION REQUIREMENT FOR ADOPTED CHILDREN 10 YEARS OF AGE OR YOUNGER.—Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,

(ii) is described in section 101(b)(1)(F), and

(iii) is seeking an immigrant visa as an immediate relative under section 201(b),

if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

(2) CRIMINAL AND RELATED GROUNDS.—

(A) CONVICTION OF CERTAIN CRIMES.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime,

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

(ii) EXCEPTION.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) MULTIPLE CRIMINAL CONVICTIONS.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) CONTROLLED SUBSTANCE TRAFFICKERS.—Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

(D) PROSTITUTION AND COMMERCIALIZED VICE.—Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, entry, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E) CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

(F) WAIVER AUTHORIZED.—For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

(G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE ENGAGED IN PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998, and the spouse and children, if any, are inadmissible.

(H) SIGNIFICANT TRAFFICKERS IN PERSONS.—

(i) IN GENERAL.—Any alien who is listed in a report submitted pursuant to section 111(b) of the Trafficking Victims Protection Act of 2000, or who the consular officer or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 103 of such Act, is inadmissible.

(ii) BENEFICIARIES OF TRAFFICKING.—Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) EXCEPTION FOR CERTAIN SONS AND DAUGHTERS.—Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

(I) MONEY LAUNDERING.—Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or

1957 of title 18, United States Code (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

(3) SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL.—Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.

(B) TERRORIST ACTIVITIES.—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity,

(II) a consular officer or the Attorney General knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv)),

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity,

(IV) is a representative (as defined in clause (v)) of—

(aa) a foreign terrorist organization, as designated by the Secretary of State under section 219, or

(bb) a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities,

(V) is a member of a foreign terrorist organization, as designated by the Secretary under section 219, or

(VI) has used the alien's position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities, or

(VII) is the spouse or child of an alien who is inadmissible under this section, if the activity

causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.

(ii) EXCEPTION.—Subclause (VII) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) TERRORIST ACTIVITY DEFINED.—As used in this Act, the term “terrorist activity” means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this chapter, the term “engage in terrorist activity” means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this clause;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in clause (vi)(I) or (vi)(II); or

(dd) to a terrorist organization described in clause (vi)(III), unless the actor can demonstrate that he did not know, and should not reasonably have known, that the act would further the organization's terrorist activity.

This clause shall not apply to any material support the alien afforded to an organization or individual that has committed terrorist activity, if the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, concludes in his sole unreviewable discretion, that this clause should not apply.

(v) REPRESENTATIVE DEFINED.—As used in this paragraph, the term “representative” includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an

organization or its members to engage in terrorist activity.

(vi) **TERRORIST ORGANIZATION DEFINED.**—As used in clause (i)(VI) and clause (iv), the term “terrorist organization” means an organization—

(I) designated under section 219;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that the organization engages in the activities described in subclause (I), (II), or (III) of clause (iv), or that the organization provides material support to further terrorist activity; or

(III) that is a group of two or more individuals, whether organized or not, which engages in the activities described in subclause (I), (II), or (III) of clause (iv).

(C) **FOREIGN POLICY.**—

(i) **IN GENERAL.**—An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

(ii) **EXCEPTION FOR OFFICIALS.**—An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

(iii) **EXCEPTION FOR OTHER ALIENS.**—An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien’s admission would compromise a compelling United States foreign policy interest.

(iv) **NOTIFICATION OF DETERMINATIONS.**—If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) **IMMIGRANT MEMBERSHIP IN TOTALITARIAN PARTY.**—

(i) **IN GENERAL.**—Any immigrant who is or has been a member of or affiliated with the Communist or

any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) EXCEPTION FOR INVOLUNTARY MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) EXCEPTION FOR PAST MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) EXCEPTION FOR CLOSE FAMILY MEMBERS.—The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

(E) PARTICIPANTS IN NAZI PERSECUTIONS OR GENOCIDE.—

(i) PARTICIPATION IN NAZI PERSECUTIONS.—Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

(ii) PARTICIPATION IN GENOCIDE.—Any alien who has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible.

(F) ASSOCIATION WITH TERRORIST ORGANIZATIONS.—

Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

(4)<sup>1</sup> PUBLIC CHARGE.—

(A) IN GENERAL.—Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) FACTORS TO BE TAKEN INTO ACCOUNT.—(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—

- (I) age;
- (II) health;
- (III) family status;
- (IV) assets, resources, and financial status; and
- (V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 213A for purposes of exclusion under this paragraph.

(C) FAMILY-SPONSORED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 201(b)(2) or 203(a) is inadmissible under this paragraph unless—

(i) the alien has obtained—

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A), or

(II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B); or

(ii) the person petitioning for the alien's admission (and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affi-

<sup>1</sup>Section 305(c) of division C of P.L. 104–208 provided as follows:

(c) MISCELLANEOUS CONFORMING AMENDMENT.—Section 212(a)(4) (8 U.S.C. 1182(a)(4)), as amended by section 621(a) of this division, is amended by striking “241(a)(5)(B)” each place it appears and inserting “237(a)(5)(B)”.

The amendment made by this section cannot be executed for 2 reasons. First, section 621(a) of such division did not amend this paragraph. Second, this paragraph, as in effect both before and after the enactment of such P.L., contains no references to “241(a)(5)(B)”.

davit of support described in section 213A with respect to such alien.

(D) CERTAIN EMPLOYMENT-BASED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS.—

(A) LABOR CERTIFICATION.—

(i) IN GENERAL.—Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) CERTAIN ALIENS SUBJECT TO SPECIAL RULE.—For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or  
(II) has exceptional ability in the sciences or the arts.

(iii) PROFESSIONAL ATHLETES.—

(I) IN GENERAL.—A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(II) DEFINITION.—For purposes of subclause (I), the term “professional athlete” means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

(iv) LONG DELAYED ADJUSTMENT APPLICANTS.—A certification made under clause (i) with respect to an individual whose petition is covered by section 204(j) shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(B) UNQUALIFIED PHYSICIANS.—An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.—Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(i) the alien's education, training, license, and experience—

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available,

standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

(D) APPLICATION OF GROUNDS.—The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.—

(A) ALIENS PRESENT WITHOUT ADMISSION OR PAROLE.—

(i) IN GENERAL.—An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) EXCEPTION FOR CERTAIN BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien qualifies for immigrant status under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1),

(II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) FAILURE TO ATTEND REMOVAL PROCEEDING.—Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

(C) MISREPRESENTATION.—

(i) **IN GENERAL.**—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission<sup>1</sup> into the United States or other benefit provided under this Act is inadmissible.

(ii) **FALSELY CLAIMING CITIZENSHIP.**—

(I) **IN GENERAL.**—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) **EXCEPTION.**—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) **WAIVER AUTHORIZED.**—For provision authorizing waiver of clause (i), see subsection (i).

(D) **STOWAWAYS.**—Any alien who is a stowaway is inadmissible.

(E) **SMUGGLERS.**—

(i) **IN GENERAL.**—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) **SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.**—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) **WAIVER AUTHORIZED.**—For provision authorizing waiver of clause (i), see subsection (d)(11).

(F) **SUBJECT OF CIVIL PENALTY.**—

(i) **IN GENERAL.**—An alien who is the subject of a final order for violation of section 274C is inadmissible.

(ii) **WAIVER AUTHORIZED.**—For provision authorizing waiver of clause (i), see subsection (d)(12).

(G) STUDENT VISA ABUSERS.—An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(l) is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

(7) DOCUMENTATION REQUIREMENTS.—

(A) IMMIGRANTS.—

(i) IN GENERAL.—Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), or

(II) whose visa has been issued without compliance with the provisions of section 203, is inadmissible.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (k).

(B) NONIMMIGRANTS.—

(i) IN GENERAL.—Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

is inadmissible.

(ii) GENERAL WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(4).

(iii) GUAM VISA WAIVER.—For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (l).

(iv) VISA WAIVER PROGRAM.—For authority to waive the requirement of clause (i) under a program, see section 217.

(8) INELIGIBLE FOR CITIZENSHIP.—

(A) IN GENERAL.—Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B) DRAFT EVADERS.—Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of

such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

(9) ALIENS PREVIOUSLY REMOVED.—

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.—

(i) ARRIVING ALIENS.—Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) OTHER ALIENS.—Any alien not described in clause (i) who—

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.—Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(B) ALIENS UNLAWFULLY PRESENT.—

(i) IN GENERAL.—Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)<sup>1</sup>) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

(ii) CONSTRUCTION OF UNLAWFUL PRESENCE.—For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or

<sup>1</sup> So in original. Reference to "section 244(e)" should be a reference to "section 240B(a)".

is present in the United States without being admitted or paroled.

(iii) EXCEPTIONS.—

(I) MINORS.—No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(II) ASYLEES.—No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III) FAMILY UNITY.—No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(IV) BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if “violation of the terms of the alien’s nonimmigrant visa” were substituted for “unlawful entry into the United States” in subclause (III) of that paragraph.

(iv) TOLLING FOR GOOD CAUSE.—In the case of an alien who—

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application,

the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) WAIVER.—The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

(C) ALIENS UNLAWFULLY PRESENT AFTER PREVIOUS IMMIGRATION VIOLATIONS.—

(i) IN GENERAL.—Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) EXCEPTION.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1)<sup>1</sup> the alien's having been battered or subjected to extreme cruelty; and

(2)<sup>1</sup> the alien's—

(A)<sup>1</sup> removal;

(B)<sup>1</sup> departure from the United States;

(C)<sup>1</sup> reentry or reentries into the United States; or

(D)<sup>1</sup> attempted reentry into the United States.

(10) MISCELLANEOUS.—

(A) PRACTICING POLYGAMISTS.—Any immigrant who is coming to the United States to practice polygamy is inadmissible.

(B) GUARDIAN REQUIRED TO ACCOMPANY HELPLESS ALIEN.—Any alien—

(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 232(c), and

(ii) whose protection or guardianship is determined to be required by the alien described in clause (i),

is inadmissible.

(C) INTERNATIONAL CHILD ABDUCTION.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

<sup>1</sup> Margins and designations for paragraphs (1) and (2) so in law.

(ii) ALIENS SUPPORTING ABDUCTORS AND RELATIVES OF ABDUCTORS.—Any alien who—

(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or

(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.

(iii) EXCEPTIONS.—Clauses (i) and (ii) shall not apply—

(I) to a government official of the United States who is acting within the scope of his or her official duties;

(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or

(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(D) UNLAWFUL VOTERS.—

(i) IN GENERAL.—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

(ii) EXCEPTION.—In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.

(E) FORMER CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION.—Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to

have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.

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(d)(1) The Attorney General shall determine whether a ground for inadmissible<sup>1</sup> exists with respect to a nonimmigrant described in section 101(a)(15)(S). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(S), if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(S) for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 101(a)(15)(S).

(3) Except as provided in this subsection, an alien (A) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (B) who is inadmissible under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

\* \* \* \* \*

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.

\* \* \* \* \*

TRAVEL DOCUMENTATION OF ALIENS AND CITIZENS

SEC. 215. [8 U.S.C. 1185] (a) Unless otherwise ordered by the President, it shall be unlawful—

(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reason—

<sup>1</sup> So in law. Paragraph (2) was repealed by section 601(d)(2)(A) of the Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990, 104 Stat. 5076).

able rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe;

(2) for any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section;

(3) for any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(4) for any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(5) for any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(6) for any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(7) for any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

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### CHAPTER 3—ISSUANCE OF ENTRY DOCUMENTS

\* \* \* \* \*

#### APPLICATIONS FOR VISAS

#### SEC. 222. [8 U.S.C. 1202] (a) \* \* \*

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(f)<sup>1</sup> The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that—

(1) in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.<sup>2</sup>

(2) the Secretary of State, in the Secretary's discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate,

<sup>1</sup>The Department of State has cited this provision as the basis for the exemption of visa records from disclosure under section 552(b)(3) of title 5, United States Code (commonly known as the Freedom of Information Act).

<sup>2</sup>So in law. The period probably should be “; and”.

other records covered by this section related to information in the database—

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or illicit weapons; or

(B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.

\* \* \* \* \*

CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION,  
EXCLUSION, AND REMOVAL

\* \* \* \* \*

INSPECTION BY IMMIGRATION OFFICERS

SEC. 235. [8 U.S.C. 1225] (a) \* \* \*

\* \* \* \* \*

(c) REMOVAL OF ALIENS INADMISSIBLE ON SECURITY AND RELATED GROUNDS.—

(1) REMOVAL WITHOUT FURTHER HEARING.—If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), the officer or judge shall—

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) REVIEW OF ORDER.—(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) SUBMISSION OF STATEMENT AND INFORMATION.—The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

\* \* \* \* \*

DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED

SEC. 241. [8 U.S.C. 1231] (a) DETENTION, RELEASE, AND REMOVAL OF ALIENS ORDERED REMOVED.—

(1) REMOVAL PERIOD.—

(A) IN GENERAL.—Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) BEGINNING OF PERIOD.—The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) SUSPENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

(2) DETENTION.—During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 212(a)(2) or 212(a)(3)(B) or deportable under section 237(a)(2) or 237(a)(4)(B).

(3) SUPERVISION AFTER 90-DAY PERIOD.—If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(4) ALIENS IMPRISONED, ARRESTED, OR ON PAROLE, SUPERVISED RELEASE, OR PROBATION.—

(A) IN GENERAL.—Except as provided in section 343(a) of the Public Health Service Act (42 U.S.C. 259(a) and paragraph (2)), the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) EXCEPTION FOR REMOVAL OF NONVIOLENT OFFENDERS PRIOR TO COMPLETION OF SENTENCE OF IMPRISONMENT.—The Attorney General is authorized to remove an alien in accordance with applicable procedures under this Act before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 101(a)(43)(B), (C), (E), (I), or (L) and (II) the removal of the alien is appropriate and in the best interest of the United States; or

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 101(a)(43)(C) or (E)), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the Attorney General that such alien be so removed.

(C) NOTICE.—Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of removed aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

(D) NO PRIVATE RIGHT.—No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

(6) INADMISSIBLE OR CRIMINAL ALIENS.—An alien ordered removed who is inadmissible under section 212, removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

(7) EMPLOYMENT AUTHORIZATION.—No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—

(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or

(B) the removal of the alien is otherwise impracticable or contrary to the public interest.

\* \* \* \* \*

#### TEMPORARY PROTECTED STATUS

SEC. 244. [8 U.S.C. 1254a] (a) GRANTING OF STATUS.—

(1) IN GENERAL.—In the case of an alien who is a national of a foreign state designated under subsection (b) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c), the Attorney General, in accordance with this section—

(A) may grant the alien temporary protected status in the United States and shall not remove the alien from the United States during the period in which such status is in effect, and

(B) shall authorize the alien to engage in employment in the United States and provide the alien with an “employment authorized” endorsement or other appropriate work permit.

(2) DURATION OF WORK AUTHORIZATION.—Work authorization provided under this section shall be effective throughout the period the alien is in temporary protected status under this section.

(3) NOTICE.—

(A) Upon the granting of temporary protected status under this section, the Attorney General shall provide the alien with information concerning such status under this section.

(B) If, at the time of initiation of a removal proceeding against an alien, the foreign state (of which the alien is a national) is designated under subsection (b), the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(C) If, at the time of designation of a foreign state under subsection (b), an alien (who is a national of such state) is in a removal proceeding under this title, the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(D) Notices under this paragraph shall be provided in a form and language that the alien can understand.

(4) TEMPORARY TREATMENT FOR ELIGIBLE ALIENS.—

(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

(B) In the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien's eligibility for such benefits under paragraph (1) has been made, the alien shall be provided such benefits.

(5) CLARIFICATION.—Nothing in this section shall be construed as authorizing the Attorney General to deny temporary protected status to an alien based on the alien's immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this Act. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this Act.

(b) DESIGNATIONS.—

(1) IN GENERAL.—The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is

published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) EFFECTIVE PERIOD OF DESIGNATION FOR FOREIGN STATES.—The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the Attorney General may specify in the notice published under such paragraph, and

(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the Attorney General, of not less than 6 months and not more than 18 months.

(3) PERIODIC REVIEW, TERMINATIONS, AND EXTENSIONS OF DESIGNATIONS.—

(A) PERIODIC REVIEW.—At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) TERMINATION OF DESIGNATION.—If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

(C) EXTENSION OF DESIGNATION.—If the Attorney General does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

(4) INFORMATION CONCERNING PROTECTED STATUS AT TIME OF DESIGNATIONS.—At the time of a designation of a foreign state under this subsection, the Attorney General shall make available information respecting the temporary protected status made available to aliens who are nationals of such designated foreign state.

(5) REVIEW.—

(A) DESIGNATIONS.—There is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

(B) APPLICATION TO INDIVIDUALS.—The Attorney General shall establish an administrative procedure for the review of the denial of benefits to aliens under this subsection. Such procedure shall not prevent an alien from asserting protection under this section in removal proceedings if the alien demonstrates that the alien is a national of a state designated under paragraph (1).

(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.—

(1) IN GENERAL.—

(A) NATIONALS OF DESIGNATED FOREIGN STATES.—Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(1) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state), meets the requirements of this paragraph only if—

(i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(ii) the alien has continuously resided in the United States since such date as the Attorney General may designate;

(iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and

(iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the temporary protected status under this section during a registration period of not less than 180 days.

(B) REGISTRATION FEE.—The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an “employment authorized” endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed \$50. In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the Attorney General may impose a separate, additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of title 31, United States Code, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.

(2) ELIGIBILITY STANDARDS.—

- (A) **WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.**—In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—
- (i) the provisions of paragraphs (5) and (7)(A) of section 212(a) shall not apply;
  - (ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but
  - (iii) the Attorney General may not waive—
    - (I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,
    - (II) paragraph (2)(C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or
    - (III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).
- (B) **ALIENS INELIGIBLE.**—An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—
- (i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or
  - (ii) the alien is described in section 208(b)(2)(A).
- (3) **WITHDRAWAL OF TEMPORARY PROTECTED STATUS.**—The Attorney General shall withdraw temporary protected status granted to an alien under this section if—
- (A) the Attorney General finds that the alien was not in fact eligible for such status under this section,
  - (B) except as provided in paragraph (4) and permitted in subsection (f)(3), the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section, or
  - (C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.
- (4) **TREATMENT OF BRIEF, CASUAL, AND INNOCENT DEPARTURES AND CERTAIN OTHER ABSENCES.**—
- (A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.
  - (B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in subparagraph (A) or due merely to a brief temporary trip abroad required by emer-

gency or extenuating circumstances outside the control of the alien.

(5) CONSTRUCTION.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) CONFIDENTIALITY OF INFORMATION.—The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) DOCUMENTATION.—

(1) INITIAL ISSUANCE.—Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(2) PERIOD OF VALIDITY.—Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

(3) EFFECTIVE DATE OF TERMINATIONS.—If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

(4) DETENTION OF THE ALIEN.—An alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States.

(e) RELATION OF PERIOD OF TEMPORARY PROTECTED STATUS TO CANCELLATION OF REMOVAL.—With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 240A(a), unless the Attorney General determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

(f) BENEFITS AND STATUS DURING PERIOD OF TEMPORARY PROTECTED STATUS.—During a period in which an alien is granted temporary protected status under this section—

(1) the alien shall not be considered to be permanently residing in the United States under color of law;

(2) the alien may be deemed ineligible for public assistance by a State (as defined in section 101(a)(36)) or any political subdivision thereof which furnishes such assistance;

(3) the alien may travel abroad with the prior consent of the Attorney General; and

(4) for purposes of adjustment of status under section 245 and change of status under section 248, the alien shall be considered as being in, and maintaining, lawful status as a non-immigrant.

(g) EXCLUSIVE REMEDY.—Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

(h) LIMITATION ON CONSIDERATION IN THE SENATE OF LEGISLATION ADJUSTING STATUS.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that—

(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

(B) has the effect of amending this subsection or limiting the application of this subsection.

(2) SUPERMAJORITY REQUIRED.—Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(3) RULES.—Paragraphs (1) and (2) are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters described in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(i) ANNUAL REPORT AND REVIEW.—

(1) ANNUAL REPORT.—Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include—

(A) a listing of the foreign states or parts thereof designated under this section,

(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or extended under subsection (b)(3).

(2) COMMITTEE REPORT.—No later than 180 days after the date of receipt of such a report, the Committee on the Judiciary of each House of Congress shall report to its respective House such oversight findings and legislation as it deems appropriate.

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## CHAPTER 7—REGISTRATION OF ALIENS

### ALIENS SEEKING ENTRY INTO THE UNITED STATES

SEC. 261. [8 U.S.C. 1301] No visa shall be issued to any alien seeking to enter the United States until such alien has been registered in accordance with section 221(b).

### REGISTRATION OF ALIENS IN THE UNITED STATES

SEC. 262. [8 U.S.C. 1302] (a) It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 221(b) of this Act or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days.

(b) It shall be the duty of every parent or legal guardian of any alien now or hereafter in the United States, who (1) is less than fourteen years of age, (2) has not been registered under section 221(b) of this Act or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days. Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.

(c) The Attorney General may, in his discretion and on the basis of reciprocity pursuant to such regulations as he may prescribe, waive the requirement of fingerprinting specified in subsections (a) and (b) in the case of any nonimmigrant.

### PROVISIONS GOVERNING REGISTRATION OF SPECIAL GROUPS

SEC. 263. [8 U.S.C. 1303] (a) Notwithstanding the provisions of sections 261 and 262, the Attorney General is authorized to prescribe special regulations and forms for the registration and fingerprinting of (1) alien crewmen, (2) holders of border-crossing identification cards, (3) aliens confined in institutions within the United States, (4) aliens under order of removal, (5) aliens who are or have been on criminal probation or criminal parole within the United States, and (6) aliens of any other class not lawfully admitted to the United States for permanent residence.

(b) The provisions of section 262 and of this section shall not be applicable to any alien who is in the United States as a nonimmigrant under section 101(a)(15)(A) or 101(a)(15)(G) until the alien ceases to be entitled to such a nonimmigrant status.

FORMS AND PROCEDURE

SEC. 264. [8 U.S.C. 1304] (a) The Attorney General and the Secretary of State jointly are authorized and directed to prepare forms for the registration of aliens under section 261 of this title, and the Attorney General is authorized and directed to prepare forms for the registration and fingerprinting of aliens under section 262 of this title. Such forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the police and criminal record, if any, of such alien; and (5) such additional matters as may be prescribed.

(b) All registration and fingerprint records made under the provisions of this title shall be confidential, and shall be made available only (1) pursuant to section 287(f)(2), and (2) to such persons or agencies as may be designated by the Attorney General.

(c) Every person required to apply for the registration of himself or another under this title shall submit under oath the information required for such registration. Any person authorized under regulations issued by the Attorney General to register aliens under this title shall be authorized to administer oaths for such purpose.

(d) Every alien in the United States who has been registered and fingerprinted under the provisions of the Alien Registration Act, 1940, or under the provisions of this Act shall be issued a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations issued by the Attorney General.

(e) Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d). Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.

(f) Notwithstanding any other provision of law, the Attorney General is authorized to require any alien to provide the alien's social security account number for purposes of inclusion in any record of the alien maintained by the Attorney General or the Service.

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CHAPTER 8—GENERAL PENALTY PROVISIONS

\* \* \* \* \*

AIDING OR ASSISTING CERTAIN ALIENS TO ENTER THE UNITED STATES

SEC. 277. [8 U.S.C. 1327] Any person who knowingly aids or assists any alien inadmissible under section 212(a)(2) (insofar as an alien inadmissible under such section has been convicted of an aggravated felony) or 212(a)(3) (other than subparagraph (E) thereof) to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to

enter the United States, shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both.

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CHAPTER 9—MISCELLANEOUS

\* \* \* \* \*

CENTRAL FILE; INFORMATION FROM OTHER DEPARTMENTS AND AGENCIES

SEC. 290. [8 U.S.C. 1360] (a) There shall be established in the office of the Commissioner, for the use of the security and enforcement agencies of the Government of the United States, a central index, which shall contain the names of all aliens heretofore admitted or denied admission to the United States, insofar as such information is available from the existing records of the Service, and the names of all aliens hereafter admitted or denied admission to the United States, the names of their sponsors of record, if any, and such other relevant information as the Attorney General shall require as an aid to the proper enforcement of this Act.

(b) Any information in any records kept by any department or agency of the Government as to the identity and location of aliens in the United States shall be made available to the Service upon request made by the Attorney General to the head of any such department or agency.

(c)(1) Not later than 3 months after the end of each fiscal year (beginning with fiscal year 1996), the Commissioner of Social Security shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the aggregate quantity of social security account numbers issued to aliens not authorized to be employed, with respect to which, in such fiscal year, earnings were reported to the Social Security Administration.

(2) If earnings are reported on or after January 1, 1997, to the Social Security Administration on a social security account number issued to an alien not authorized to work in the United States, the Commissioner of Social Security shall provide the Attorney General with information regarding the name and address of the alien, the name and address of the person reporting the earnings, and the amount of the earnings. The information shall be provided in an electronic form agreed upon by the Commissioner and the Attorney General.

(d) A written certification signed by the Attorney General or by any officer of the Service designated by the Attorney General to make such certification, that after diligent search no record or entry of a specified nature is found to exist in the records of the Service, shall be admissible as evidence in any proceeding as evidence that the records of the Service contain no such record or entry, and shall have the same effect as the testimony of a witness given in open court.

\* \* \* \* \*

TITLE III—NATIONALITY AND NATURALIZATION

\* \* \* \* \*

## CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

\* \* \* \* \*

PROHIBITION UPON THE NATURALIZATION OF PERSONS OPPOSED TO  
GOVERNMENT OR LAW, OR WHO FAVOR TOTALITARIAN FORMS OF  
GOVERNMENT

SEC. 313. [8 U.S.C. 1424] (a) Notwithstanding the provisions of section 405(b), no person shall hereafter be naturalized as a citizen of the United States—

(1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches, opposition to all organized government; or

(2) who is a member of or affiliated with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (F) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt, unless such alien establishes that he did not have knowledge or reason to believe at the time he became a member of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist-front organization; or

(3) who, although not within any of the other provisions of this section, advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who is a member of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under authority of such organizations or paid for by the funds of such organization; or

(4) who advocates or teaches or who is a member of or affiliated with any organization that advocates or teaches (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or

(5) who writes or publishes or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, print-

ed, published, or displayed or who knowingly has in his possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating (A) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or (E) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship; or

(6) who is a member of or affiliated with any organization, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (5).

(b) The provisions of this section or of any other section of this Act shall not be construed as declaring that any of the organizations referred to in this section or in any other section of this Act do not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means.

(c) The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the application for naturalization or after such filing and before taking the final oath of citizenship is, or has been found to be within any of the classes enumerated within this section, notwithstanding that at the time the application is filed he may not be included within such classes.

(d) Any person who is within any of the classes described in subsection (a) solely because of past membership in, or past affiliation with, a party or organization may be naturalized without regard to the provisions of subsection (c) if such person establishes that such membership or affiliation is or was involuntary, or occurred and terminated prior to the attainment by such alien of the age of sixteen years, or that such membership or affiliation is or was by operation of law, or was for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes.

(e) A person may be naturalized under this title without regard to the prohibitions in subsections (a)(2) and (c) of this section if the person—

- (1) is otherwise eligible for naturalization;
- (2) is within the class described in subsection (a)(2) solely because of past membership in, or past affiliation with, a party or organization described in that subsection;
- (3) does not fall within any other of the classes described in that subsection; and
- (4) is determined by the Director of Central Intelligence, in consultation with the Secretary of Defense, and with the con-

currence of the Attorney General, to have made a contribution to the national security or to the national intelligence mission of the United States.

\* \* \* \* \*

REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION, AND FAVORABLE DISPOSITION TO THE UNITED STATES

SEC. 316. [8 U.S.C. 1427] (a) \* \* \*

\* \* \* \* \*

(f)(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that an applicant otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the applicant may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 313 of this Act, and no residence within a particular State or district of the Service in the United States shall be required: *Provided*, That the applicant has continuously resided in the United States for at least one year prior to naturalization: *Provided further*, That the provisions of this subsection shall not apply to any alien described in clauses (i) through (v) of section 208(b)(2)(A) of this Act.

(2) An applicant for naturalization under this subsection may be administered the oath of allegiance under section 337(a) by any district court of the United States, without regard to the residence of the applicant. Proceedings under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods and activities.

(3) The number of aliens naturalized pursuant to this subsection in any fiscal year shall not exceed five. The Director of Central Intelligence shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time prior to the filing of each application under the provisions of this subsection.

\* \* \* \* \*

ALIEN ENEMIES; NATURALIZATION UNDER SPECIFIED CONDITIONS AND PROCEDURE

SEC. 331. [8 U.S.C. 1442] (a) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may, after his loyalty has been fully established upon investigation by the Attorney General, be naturalized as a citizen of the United States if such alien's application for naturalization shall be pending at the beginning of the state of war and the applicant is otherwise entitled to admission to citizenship.

(b) An alien embraced within this section shall not have his application for naturalization considered or heard except after 90 days' notice to the Attorney General to be considered at the exam-

ination or hearing, and the Attorney General's objection to such consideration shall cause the application to be continued from time to time for so long as the Attorney General may require.

(c) The Attorney General may, in his discretion, upon investigation fully establishing the loyalty of any alien enemy who did not have an application for naturalization pending at the beginning of the state of war, except such alien enemy from the classification of alien enemy for the purposes of this title, and thereupon such alien shall have the privilege of filing an application for naturalization.

(d) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended.

(e) Nothing contained herein shall be taken or construed to interfere with or prevent the apprehension and removal, consistent with law, of any alien enemy at any time prior to the actual naturalization of such alien.

\* \* \* \* \*

CHAPTER 3—LOSS OF NATIONALITY

LOSS OF NATIONALITY BY NATIVE-BORN OR NATURALIZED CITIZEN <sup>1</sup>

SEC. 349. [8 U.S.C. 1481] (a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality—

(1) \* \* \*

\* \* \* \* \*

(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, United States Code, or willfully performing any act in violation of section 2385 of title 18, United States Code, or violating section 2384 of said title by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.

<sup>1</sup>Section 1999 of the Revised Statutes of the United States (8 U.S.C. 1481 note) provides as follows: "Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness, and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic."

**SECTION 13 OF PUBLIC LAW 85-316**

**(ADJUSTMENT OF STATUS OF CERTAIN NON-  
IMMIGRANTS TO THAT OF PERMANENT RESIDENT  
ALIEN)**

SEC. 13. [8 U.S.C. 1255b] Notwithstanding any other provision of law—

(a) Any alien admitted to the United States as a non-immigrant under the provisions of either section 101(a)(15)(A) (i) or (ii) or 101(a)(15)(G) (i) or (ii) of the Immigration and Nationality Act, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

(b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest, that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for adjustment of status is made.

(c) A complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such adjustment of status. Such reports shall be submitted on the first day of each calendar month in which Congress is in session. The Secretary of State shall, if the alien was classifiable as a quota immigrant at the time of his entry, reduce by one the quota of the quota area to which the alien is chargeable under section 202 of the Immigration and Nationality Act for the fiscal year then current or the next following year in which a quota is available. No quota shall be so reduced by more than 50 per centum in any fiscal year.

(d) The number of aliens who may be granted the status of aliens lawfully admitted for permanent residence in any fiscal year, pursuant to this section, shall not exceed fifty.



## F. BUDGET-RELATED LAWS

### SECTION 3524 OF TITLE 31, UNITED STATES CODE (UNVOUCHERED EXPENDITURES)

#### § 3524. Auditing expenditures approved without vouchers

(a)(1) The Comptroller General may audit expenditures, accounted for only on the approval, authorization, or certificate of the President or an official of an executive agency, to decide if the expenditure was authorized by law and made. Records and related information shall be made available to the Comptroller General in conducting the audit.

(2) The Comptroller General may release the results of the audit or disclose related information only to the President or head of the agency, or, if there is an unresolved discrepancy, to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations<sup>1</sup> of the House of Representatives, and the committees of Congress having legislative or appropriation oversight of the expenditure.

(b) Before December 1 of each year, the Director of the Office of Management and Budget shall submit a report listing each account that may be subject to this section to the Committees on the Budget and Appropriations of both Houses of Congress, the Committee on Governmental Affairs, and to the Committee on Government Operations<sup>1</sup>, and to the Comptroller General.

(c) The President may exempt from this section a financial transaction about sensitive foreign intelligence or foreign counter-intelligence activities or sensitive law enforcement investigations if an audit would expose the identifying details of an active investigation or endanger investigative or domestic intelligence sources involved in the investigation. The exemption may apply to a class or category of financial transactions.

(d) This section does not—

(1) apply to expenditures under section 102, 103, 105(d)(1), (3), or (5), or 106(b)(2) or (3) of title 3; or

(2) affect authority under section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j(b)).

(e) Information about a financial transaction exempt under subsection (c) of this section or a financial transaction under section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j(b)) may be reviewed by the Permanent Select Committee on Intelligence of the House and the Select Committee on Intelligence of the Senate.

<sup>1</sup>The Committee on Government Operations was renamed to the Committee on Government Reform and Oversight by H. Res. 6 in the 104th Congress, and renamed the Committee on Government Reform by H. Res. 5 in the 106th Congress.

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(f) Subsections (a)(1) and (d)(1) of this section may be superseded only by a law enacted after April 3, 1980, specifically repealing or amending this section.

**SECTIONS 109, 610, AND 614 OF THE FOREIGN  
ASSISTANCE ACT OF 1961**

SEC. 109. [22 U.S.C. 2151g] TRANSFER OF FUNDS.—Whenever the President determines it to be necessary for the purposes of this chapter, not to exceed 15 per centum of the funds made available for any provision of this chapter may be transferred to, and consolidated with, the funds made available for any other provision of this chapter, and may be used for any of the purposes for which such funds may be used, except that the total in the provision for the benefit of which the transfer is made shall not be increased by more than 25 per centum of the amount of funds made available for such provision. The authority of sections 610(a) and 614(a) of this Act may not be used to transfer funds made available under this chapter for use for purposes of any other provision of this Act except that the authority of such sections may be used to transfer for the purposes of section 667 not to exceed five per centum of the amount of funds made available for section 667(a)(1).

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SEC. 610. [22 U.S.C. 2360] TRANSFER BETWEEN ACCOUNTS.—(a) Whenever the President determines it to be necessary for the purposes of this Act, not to exceed 10 per centum of the funds made available for any provision of this Act (except funds made available pursuant to title IV of chapter 2 of part I or for section 23 of the Arms Export Control Act) may be transferred to, and consolidated with, the funds made available for any provision of this Act, (except funds made available under chapter 2 of part II of this Act) and may be used for any of the purposes for which such funds may be used, except that the total in the provision for the benefit of which the transfer is made shall not be increased by more than 20 per centum of the amount of funds made available for such provision.

(b) The authority contained in this section and in sections 451, 506, and 614 shall not be used to augment appropriations made available pursuant to sections 636(g)(1) and 637 or used otherwise to finance activities which normally would be financed from appropriations for administrative expenses.

(c) Any funds which the President has notified Congress pursuant to section 653 that he intends to provide in military assistance to any country may be transferred to, and consolidated with, any other funds he has notified Congress pursuant to such section that he intends to provide to that country for development assistance purposes.

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SEC. 614. [22 U.S.C. 2364] SPECIAL AUTHORITIES.—(a)(1) The President may authorize the furnishing of assistance under this Act without regard to any provision of this Act, the Arms Export

Control Act, any law relating to receipts and credits accruing to the United States, and any Act authorizing or appropriating funds for use under this Act, in furtherance of any of the purposes of this Act, when the President determines, and so notifies in writing the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that to do so is important to the security interests of the United States.

(2) The President may make sales, extend credit, and issue guarantees under the Arms Export Control Act, without regard to any provision of this Act, the Arms Export Control Act, any law relating to receipts and credits accruing to the United States, and any Act authorizing or appropriating funds for use under the Arms Export Control Act, in furtherance of any of the purposes of such Act, when the President determines, and so notifies in writing the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that to do so is vital to the national security interests of the United States.

(3) Before exercising the authority granted in this subsection, the President shall consult with, and shall provide a written policy justification to, the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(4)(A) The authority of this subsection may not be used in any fiscal year to authorize—

(i) more than \$750,000,000 in sales to be made under the Arms Export Control Act;

(ii) the use of more than \$250,000,000 of funds made available for use under this Act or the Arms Export Control Act; and

(iii) the use of more than \$100,000,000 of foreign currencies accruing under this Act or any other law.

(B) If the authority of this subsection is used both to authorize a sale under the Arms Export Control Act and to authorize funds to be used under the Arms Export Control Act or under this Act with respect to the financing of that sale, then the use of the funds shall be counted against the limitation in subparagraph (A)(ii) and the portion, if any, of the sale which is not so financed shall be counted against the limitation in subparagraph (A)(i).

(C) Not more than \$50,000,000 of the \$250,000,000 limitation provided in subparagraph (A)(ii) may be allocated to any one country in any fiscal year unless that country is a victim of active aggression, and not more than \$500,000,000 of the aggregate limitation of \$1,000,000,000 provided in subparagraphs (A)(i) and (A)(ii) may be allocated to any one country in any fiscal year.

(5) The authority of this section may not be used to waive the limitations on transfers contained in section 610(a) of this Act.

(b) Whenever the President determines it to be important to the national interest, he may use funds available for the purposes of chapter 4 of part I in order to meet the responsibilities or objectives of the United States in Germany, including West Berlin, and without regard to such provisions of law as he determines should be disregarded to achieve this purpose.

(c) The President is authorized to use amounts not to exceed \$50,000,000 of the funds made available under this Act pursuant to his certification that it is inadvisable to specify the nature of the use of such funds, which certification shall be deemed to be a sufficient voucher for such amounts. The President shall fully inform the chairman and ranking minority member of the Committee on Foreign Affairs of the House of Representatives and the chairman and ranking minority member of the Committee on Foreign Relations of the Senate of each use of funds under this subsection prior to the use of such funds.

**SECTIONS 9012, 9014, 9029, 9030, 9038, 9069, 9078, 9105,  
9124, AND 9165 OF THE DEPARTMENT OF DEFENSE AP-  
PROPRIATIONS ACT, 1993**

SEC. 9012. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 1995.

\* \* \* \* \*

(TRANSFER OF FUNDS)

SEC. 9014. None of the funds appropriated in this Act may be made available through transfer, reprogramming, or other means between the Central Intelligence Agency and the Department of Defense for any intelligence or special activity different from that previously justified to the Congress unless the Director of Central Intelligence or the Secretary of Defense has notified the House and Senate Appropriations Committees of the intent to make such funds available for such activity.

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SEC. 9029. None of the funds provided by this Act may be used to pay the salaries of any person or persons who authorize the transfer of unobligated and deobligated appropriations into the Reserve for Contingencies of the Central Intelligence Agency.

SEC. 9030. Funds appropriated by this Act for construction projects of the Central Intelligence Agency, which are transferred to another Agency for execution, shall remain available until expended.

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SEC. 9038. Monetary limitations on the purchase price of a passenger motor vehicle shall not apply to vehicles purchased for intelligence activities conducted pursuant to Executive Order 12333 or successor orders.

\* \* \* \* \*

SEC. 9069. (a) As stated in section 3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2402(5)(A)), it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States person.

(b)(1) Consistent with the policy referred to in subsection (a), no Department of Defense prime contract in excess of the small purchase threshold, as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), may be awarded

to a foreign person, company, or entity unless that person, company, or entity certifies to the Secretary of Defense that it does not comply with the secondary Arab boycott of Israel.

(2) The Secretary of Defense may waive the prohibition in paragraph (1) in specific instances when the Secretary determines that the waiver is necessary in the national security interests of the United States. Within 15 days after the end of each calendar quarter, the Secretary shall submit to Congress a report identifying each contract for which a waiver was granted under this paragraph during such quarter.

(3) This provision does not apply to contracts for consumable supplies, provisions or services intended to be executed for the support of the United States or of allied forces in a foreign country, nor does it apply to contracts pertaining to any equipment, technology, data, or services for intelligence or classified purposes, or the acquisition or lease thereof by the United States Government in the interests of national security.

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SEC. 9078. [21 U.S.C. 873 nt] There is established, under the direction and control of the Attorney General, the National Drug Intelligence Center, whose mission it shall be to coordinate and consolidate drug intelligence from all national security and law enforcement agencies, and produce information regarding the structure, membership, finances, communications, and activities of drug trafficking organizations: *Provided*, That funding for the operation of the National Drug Intelligence Center, including personnel costs associated therewith, shall be provided from the funds appropriated to the Department of Defense for drug interdiction and counter-drug activities: *Provided further*, That of the funds so appropriated for the fiscal year beginning October 1, 1991, \$20,000,000 available for the National Drug Intelligence Center may be available to the Secretary of Defense to reimburse the Department of Justice for support provided to the National Drug Intelligence Center: *Provided further*, That section 8083 of the Department of Defense Appropriations Act, 1992 (Public Law 102-172) is amended by striking out "available only for" and inserting "available until expended only for" in lieu thereof.

\* \* \* \* \*

SEC. 9105. (a) None of the funds appropriated by this Act may be obligated or expended for any program, project, sub-project, or activity which is accomplished under a "Limited Dissemination (LI)" security control method until the Secretary of Defense submits, to the Congressional defense committees, a report containing:

- (1) annual costs in the fiscal years 1994-1999 Future Years Defense Program, and total costs;
- (2) appropriation account and program element or line item;
- (3) content and military justification; and
- (4) acquisition milestones and schedule through completion.

(b) The information in the report required by subsection (a) above shall be provided for each program, project, sub-project, or activity accomplished under the LI security control method during

fiscal years 1990–1993, and for each such effort to be undertaken in fiscal year 1994.

(c) The report required by subsection (a) above shall be submitted no later than the date upon which the fiscal year 1994 Department of Defense budget request is provided to Congress.

(d) The requirements contained in subsections (a) through (c), above, shall not apply to LI programs, projects, subprojects, or activities within the National Foreign Intelligence Program.

\* \* \* \* \*

SEC. 9124. As of September 1, 1993, none of the funds appropriated by this Act shall be available for payment of the compensation of personnel assigned to or serving in the National Foreign Intelligence Program in excess of 98 percent of such personnel actually assigned to or serving in the National Foreign Intelligence Program on September 30, 1992: *Provided*, That in making any reduction in the number of such personnel that may be required pursuant to this section, the percentage of reductions to Senior Intelligence Service positions shall be equal to or exceed the percentage of reductions to non-Senior Intelligence Service positions: *Provided further*, That in making any reduction in the number of such personnel that may be required pursuant to this section, the percentage of reductions to positions in the National Capital Region shall be equal to or exceed the percentage of reductions to positions outside of the National Capital Region.

\* \* \* \* \*

**[SEC. 9165. Repealed by section 303 of Pub. L. 103–50 (107 Stat. 250).]**

**SECTIONS 8104, 8105, AND 8107 OF THE  
DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1994**

\* \* \* \* \*

SEC. 8104. During the current fiscal year and thereafter, funds appropriated for construction projects of the Central Intelligence Agency, which are transferred to another Agency for execution, shall remain available until expended.

SEC. 8105. During the current fiscal year and thereafter, monetary limitations on the purchase price of a passenger motor vehicle shall not apply to vehicles purchased for intelligence activities conducted pursuant to Executive Order 12333 or successor orders.

\* \* \* \* \*

(TRANSFER OF FUNDS)

SEC. 8107. During the current fiscal year and thereafter, no funds may be made available through transfer, reprogramming, or other means between the Central Intelligence Agency and the Department of Defense for any intelligence or special activity different from that previously justified to the Congress unless the Director of Central Intelligence or the Secretary of Defense has notified the House and Senate Appropriations Committees of the intent to make such funds available for such activity.

\* \* \* \* \*

**SECTIONS 8005, 8008, 8030, 8081, 8082-8085, 8092, 8114, 8131,  
AND 8154 OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1995**

(TRANSFER OF FUNDS)

SEC. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed \$2,000,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by Congress: *Provided further*, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act.

\* \* \* \* \*

SEC. 8008. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in session in advance to the Committees on Appropriations and Armed Services of the Senate and House of Representatives.

\* \* \* \* \*

SEC. 8030. Notwithstanding any other provision of law, none of the funds appropriated in this Act may be used to purchase, install, replace, or otherwise repair any lock on a safe or security container which protects information critical to national security or any other classified materials and which has not been certified as passing the security lock specifications contained in regulation FF-L-2740 dated October 12, 1989, and has not passed all testing criteria and procedures established through February 28, 1992: *Provided*, That the Director of Central Intelligence may waive this provision, on a case-by-case basis only, upon certification that the above cited locks are not adequate for the protection of sensitive intelligence information.

\* \* \* \* \*

SEC. 8081. None of the funds appropriated by this Act shall be available for payment of the compensation of personnel assigned to or serving in the National Foreign Intelligence Program in excess of 94 percent of such personnel actually assigned to or serving in

the National Foreign Intelligence Program on September 30, 1992: *Provided*, That in making any reduction in the number of such personnel that may be required pursuant to this section, the percentage of reductions to Senior Intelligence Service positions shall be equal to or exceed the percentage of reductions to non-Senior Intelligence Service positions: *Provided further*, That in making any reduction in the number of such personnel that may be required pursuant to this section, the percentage of reductions to positions in the National Capital Region shall be equal to or exceed the percentage of reductions to positions outside of the National Capital Region.

\* \* \* \* \*

SEC. 8082. None of the funds provided by this Act may be used to pay the salaries of any person or persons who authorize the transfer of obligated and deobligated appropriations into the Reserve for Contingencies of the Central Intelligence Agency.

SEC. 8083. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 1996.

SEC. 8084. [10 U.S.C. 114 nt] The classified Annex prepared by the Committee on Appropriations to accompany the report on the Department of Defense Appropriations Act, 1995 is hereby incorporated into this Act: *Provided*, That the amounts specified in the classified Annex are not in addition to amounts appropriated by other provisions of this Act: *Provided further*, That the President shall provide for appropriate distribution of the classified Annex, or of appropriate portions of the classified Annex, within the executive branch of the Government.

SEC. 8085. Notwithstanding any other provision of law, funds made available in this Act for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.

\* \* \* \* \*

SEC. 8092. The Secretary of Defense and the Director of Central Intelligence shall deliver, no later than January 1, 1995, a report providing the following information about all research and development projects involving the implementation, monitoring, or verification of current and projected international arms control agreements: (a) annual and total budgets, goals, schedules, and priorities; (b) relationships among related projects being funded by the Department of Defense, the National Foreign Intelligence Program, and other departments and agencies of the Federal Government; and (c) comments by the Arms Control and Disarmament Agency about the relevance of each project to the arms control priorities of the United States.

\* \* \* \* \*

SEC. 8114. The Assistant Secretary of Defense for Command, Control, Communications and Intelligence shall establish and im-

plement a master plan for all acquisitions of automated document conversion systems, equipment, and technologies: *Provided*, That none of the funds in this Act may be used to develop technologies or to acquire new automated document conversion equipment, services, or systems which cost more than \$5,000,000 after April 1, 1995 unless such acquisitions are approved in advance by the Assistant Secretary or his designee: *Provided further*, That of the funds appropriated to the Department of Defense for Procurement, Defense-Wide, not less than \$20,000,000 shall be used only to integrate the Automated Document Conversion System into the Joint Engineering Data Management and Information Control System.

\* \* \* \* \*

SEC. 8131. [50 U.S.C. 403-2a] (a) No project for the construction of any facility, or improvement to any facility, having an estimated Federal cost in excess of \$300,000, may be undertaken in any fiscal year unless specifically identified as a separate item in the President's annual fiscal year budget request or otherwise specifically authorized and appropriated if such facility or improvement would be used primarily by personnel of the intelligence community.

(b) As used in this section, the term "intelligence community" has the same meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

\* \* \* \* \*

SEC. 8154. (a) [10 U.S.C. 374 nt] None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

(b) [50 U.S.C. 403f nt] None of the funds available to the Central Intelligence Agency for any fiscal year for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

\* \* \* \* \*

**SECTIONS 1341, 1342, 1350, AND 1351 OF TITLE 31,  
UNITED STATES CODE (THE “ANTI-DEFICIENCY ACT”  
AND RELATED PROVISIONS)**

**§ 1341. Limitations on expending and obligating amounts**

(a)(1) An officer or employee of the United States Government or of the District of Columbia government may not—

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or

(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

(b) An article to be used by an executive department in the District of Columbia that could be bought out of an appropriation made to a regular contingent fund of the department may not be bought out of another amount available for obligation.

**§ 1342. Limitation on voluntary services**

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term “emergencies involving the safety of human life or the protection of property” does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

\* \* \* \* \*

**§ 1350. Criminal penalty**

An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully vio-

lating section 1341(a) or 1342 of this title shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

**§ 1351. Reports on violations**

If an officer or employee of an executive agency or an officer or employee of the District of Columbia government violates section 1341(a) or 1342 of this title, the head of the agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

**SECTIONS 1535 AND 1536 OF TITLE 31, UNITED STATES  
CODE (THE "ECONOMY ACT")**

**§ 1535. Agency agreements**

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or service if—

- (1) amounts are available;
- (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;
- (3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and
- (4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

(b) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.

(c) A condition or limitation applicable to amounts for procurement of an agency or unit placing an order or making a contract under this section applies to the placing of the order or the making of the contract.

(d) An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in—

- (1) providing goods or services; or
- (2) making an authorized contract with another person to provide the requested goods or services.

(e) This section does not—

- (1) authorize orders to be placed for goods or services to be provided by convict labor; or
- (2) affect other laws about working funds.

**§ 1536. Crediting payments from purchases between executive agencies**

(a) An advance payment made on an order under section 1535 of this title is credited to a special working fund that the Secretary of the Treasury considers necessary to be established. Except as provided in this section, any other payment is credited to the ap-

appropriation or fund against which charges were made to fill the order.

(b) An amount paid under section 1535 of this title may be expended in providing goods or services or for a purpose specified for the appropriation or fund credited. Where goods are provided from stocks on hand, the amount received in payment is credited so as to be available to replace the goods unless—

(1) another law authorizes the amount to be credited to some other appropriation or fund; or

(2) the head of the executive agency filling the order decides that replacement is not necessary, in which case, the amount received is deposited in the Treasury as miscellaneous receipts.

(c) This section does not affect other laws about working funds.

**SECTIONS 1551 THROUGH 1558 OF TITLE 31, UNITED STATES CODE (CLOSING APPROPRIATIONS ACCOUNTS)**

\* \* \* \* \*

**CHAPTER 15—APPROPRIATION ACCOUNTING**

\* \* \* \* \*

**SUBCHAPTER IV—CLOSING ACCOUNTS**

**§ 1551. Definitions; applicability of subchapter**

(a) In this subchapter—

(1) An obligated balance of an appropriation account as of the end of a fiscal year is the amount of unliquidated obligations applicable to the appropriation less amounts collectible as repayments to the appropriation.

(2) An unobligated balance is the difference between the obligated balance and the total unexpended balance.

(3) A fixed appropriation account is an appropriation account available for obligation for a definite period.

(b) The limitations on the availability for expenditure prescribed in this subchapter apply to all appropriations unless specifically otherwise authorized by a law that specifically—

(1) identifies the appropriate account for which the availability for expenditure is to be extended;

(2) provides that such account shall be available for recording, adjusting, and liquidating obligations properly chargeable to that account; and

(3) extends the availability for expenditure of the obligated balances.

(c) This subchapter does not apply to—

(1) appropriations for the District of Columbia government; or

(2) appropriations to be disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives.

**§ 1552. Procedure for appropriation accounts available for definite periods**

(a) On September 30th of the 5th fiscal year after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose.

(b) Collections authorized or required to be credited to an appropriation account, but not received before closing of the account

under subsection (a) or under section 1555 of this title shall be deposited in the Treasury as miscellaneous receipts.

**§ 1553. Availability of appropriation accounts to pay obligations**

(a) After the end of the period of availability for obligation of a fixed appropriation account and before the closing of that account under section 1552(a) of this title, the account shall retain its fiscal-year identity and remain available for recording, adjusting, and liquidating obligations properly chargeable to that account.

(b)(1) Subject to the provisions of paragraph (2), after the closing of an account under section 1552(a) or 1555 of this title, obligations and adjustments to obligations that would have been properly chargeable to that account, both as to purpose and in amount, before closing and that are not otherwise chargeable to any current appropriation account of the agency may be charged to any current appropriation account of the agency available for the same purpose.

(2) The total amount of charges to an account under paragraph (1) may not exceed an amount equal to 1 percent of the total appropriations for that account.

(c)(1) In the case of a fixed appropriation account with respect to which the period of availability for obligation has ended, if an obligation of funds from that account to provide funds for a program, project, or activity to cover amounts required for contract changes would cause the total amount of obligations from that appropriation during a fiscal year for contract changes for that program, project, or activity to exceed \$4,000,000, the obligation may only be made if the obligation is approved by the head of the agency (or an officer of the agency within the Office of the head of the agency to whom the head of the agency has delegated the authority to approve such an obligation).

(2) In the case of a fixed appropriation account with respect to which the period of availability for obligation has ended, if an obligation of funds from that account to provide funds for a program, project, or activity to cover amounts required for contract changes would cause the total amount obligated from that appropriation during a fiscal year for that program, project, or activity to exceed \$25,000,000, the obligation may not be made until—

(A) the head of the agency submits to the appropriate authorizing committees of Congress and the Committees on Appropriations of the Senate and the House of Representatives a notice in writing of the intent to obligate such funds, together with a description of the legal basis for the proposed obligation and the policy reasons for the proposed obligation; and

(B) a period of 30 days has elapsed after the notice is submitted.

(3) In this subsection, the term 'contract change' means a change to a contract under which the contractor is required to perform additional work. Such term does not include adjustments to pay claims or increases under an escalation clause.

(d)(1) Obligations under this section may be paid without prior action of the Comptroller General.

(2) This subchapter does not—

(A) relieve the Comptroller General of the duty to make decisions requested under law; or

(B) affect the authority of the Comptroller General to settle claims and accounts.

**§ 1554. Audit, control, and reporting**

(a) Any audit requirement, limitation on obligations, or reporting requirement that is applicable to an appropriation account shall remain applicable to that account after the end of the period of availability for obligation of that account.

(b)(1) After the close of each fiscal year, the head of each agency shall submit to the President and the Secretary of the Treasury a report regarding the unliquidated obligations, unobligated balances, canceled balances, and adjustments made to appropriation accounts of that agency during the completed fiscal year. The report shall be submitted no later than 15 days after the date on which the President's budget for the next fiscal year is submitted to Congress under section 1105 of this title.

(2) Each report required by this subsection shall—

(A) provide a description, with reference to the fiscal year of appropriations, of the amount in each account, its source, and an itemization of the appropriations accounts;

(B) describe all current and expired appropriations accounts;

(C) describe any payments made under section 1553 of this title;

(D) describe any adjustment of obligations during that fiscal year pursuant to section 1553 of this title;

(E) contain a certification by the head of the agency that the obligated balances in each appropriation account of the agency reflect proper existing obligations and that expenditures from the account since the preceding review were supported by a proper obligation of funds and otherwise were proper;

(F) describe all balances canceled under sections 1552 and 1555 of this title.

(3) The head of each Federal agency shall provide a copy of each such report to the Speaker of the House of Representatives and the Committee on Appropriations, the Committee on Governmental Affairs, and other appropriate oversight and authorizing committees of the Senate.

(c) The head of each agency shall establish internal controls to assure that an adequate review of obligated balances is performed to support the certification required by section 1108(c) of this title.

**§ 1555. Closing of appropriation accounts available for indefinite periods**

An appropriation account available for obligation for an indefinite period shall be closed, and any remaining balance (whether obligated or unobligated) in that account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose, if—

(1) the head of the agency concerned or the President determines that the purposes for which the appropriation was made have been carried out; and

(2) no disbursement has been made against the appropriation for two consecutive fiscal years.

**§ 1556. Comptroller General: reports on appropriation accounts**

(a) In carrying out audit responsibilities, the Comptroller General shall report on operations under this subchapter to—

(1) the head of the agency concerned;

(2) the Secretary of the Treasury; and

(3) the President.

(b) A report under this section shall include an appraisal of unpaid obligations under fixed appropriation accounts for which the period of availability for obligation has ended.

**§ 1557. Authority for exemptions in appropriation laws**

A provision of an appropriation law may exempt an appropriation from the provisions of this subchapter and fix the period for which the appropriation remains available for expenditure.

**§ 1558. Availability of funds following resolution of a formal protest or other challenge**

(a) Notwithstanding section 1552 of this title or any other provision of law, funds available to an agency for obligation for a contract at the time a protest or other action referred to in subsection (b) is filed in connection with a solicitation for, proposed award of, or award of such contract shall remain available for obligation for 100 days after the date on which the final ruling is made on the protest or other action. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such an appeal or request, whichever is later.

(b) Subsection (a) applies with respect to—

(1) any protest filed under subchapter V of chapter 35 of this title; or

(2) an action commenced under administrative procedures or for a judicial remedy if—

(A) the action involves a challenge to—

(i) a solicitation for a contract;

(ii) a proposed award of a contract;

(iii) an award of a contract; or

(iv) the eligibility of an offeror or potential offeror for a contract or of the contractor awarded the contract; and

(B) commencement of the action delays or prevents an executive agency from making an award of a contract or proceeding with a procurement.

\* \* \* \* \*

**CHAPTER 5 OF THE ARMS EXPORT CONTROL ACT  
(SPECIAL DEFENSE ACQUISITION FUND)**

**CHAPTER 5—SPECIAL DEFENSE ACQUISITION FUND**

SEC. 51. [22 U.S.C. 2795] SPECIAL DEFENSE ACQUISITION FUND.—(a)(1) Under the direction of the President and in consultation with the Secretary of State, the Secretary of Defense shall establish a Special Defense Acquisition Fund (hereafter in this chapter referred to as the “Fund”), to be used as a revolving fund separate from other accounts, under the control of the Department of Defense, to finance the acquisition of defense articles and defense service in anticipation of their transfer pursuant to this Act, the Foreign Assistance Act of 1961, or as otherwise authorized by law, to eligible foreign countries and international organizations, and may acquire such articles and services with the funds in the Fund as he may determine. Acquisition under this chapter of items for which the initial issue quantity requirements for United States Armed Forces have not been fulfilled and are not under current procurement contract shall be emphasized when compatible with security assistance requirements for the transfer of such items.

(2) Nothing in this chapter may be construed to limit or impair any responsibilities conferred upon the Secretary of State or the Secretary of Defense under this Act or the Foreign Assistance Act of 1961.

(3) The Fund may be used to keep on continuous order such defense articles and defense services as are assigned by the Department of Defense for integrated management by a single agency thereof for the common use of all military departments in anticipation of the transfer of similar defense articles and defense services to foreign countries and international organizations pursuant to this Act, the Foreign Assistance Act of 1986, or other law.

(4) The Fund shall also be used to acquire defense articles that are particularly suited for use for narcotics control purposes and are appropriate to the needs of recipient countries, such as small boats, planes (including helicopters), and communications equipment.

(b) The Fund shall consist of—

(1) collections from sales made under letters of offer issued pursuant to section 21(a)(1)(A) of this Act representing the actual value of defense articles not intended to be replaced in stock,

(2) collections from sales representing the value of asset use charges (including contractor rental payments for United States Government-owned plant and production equipment) and charges for the proportionate recoupment of nonrecurring research, development, and production costs, and

(3) collections from sales made under letters of offer (or transfers made under the Foreign Assistance Act of 1961) of defense articles and defense services acquired under this chapter, representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 21(a)(1) or section 22 of this Act of section 644(m) of the Foreign Assistance Act of 1961, as appropriate,

together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.

(c)(1) The size of the Fund may not exceed such dollar amount as is prescribed in section 114(c) of title 10, United States Code. For purposes of this limitation, the size of the Fund is the amounts in the Fund plus the value (in terms of acquisition cost) of the defense articles acquired under this chapter which have not been transferred from the Fund in accordance with this chapter.

(2) Amounts in the Fund shall be available for obligation in any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

**SEC. 52. [22 U.S.C. 2795a]<sup>1</sup> USE AND TRANSFER OF ITEMS PROCURED BY THE FUND.—**(a) No defense article or defense service acquired by the Secretary of Defense under this chapter may be transferred to any foreign country or international organization unless such transfer is authorized by this Act, the Foreign Assistance Act of 1961, or other law.

(b) The President may authorize the temporary use by the United States Armed Forces of defense articles and defense services acquired under this chapter prior to their transfer to a foreign country or international organization, if such is necessary to meet national defense requirements and the United States Armed Forces bear the costs of operation and maintenance of such articles or services while in their use and the costs of restoration or replacement upon the termination of such use.

(c) Except as provided in subsection (b) of this section, the Fund may be used to pay for storage, maintenance, and other costs related to the preservation and preparation for transfer of defense articles and defense services acquired under this chapter prior to their transfer, as well as the administrative costs of the Department of Defense incurred in the acquisition of such items to the extent not reimbursed pursuant to section 43(b) of this Act.

**[SEC. 53. Repealed by section 145(a) of Pub. L. 104–164.]**

<sup>1</sup> Functions of the President under subsec. (b) of this section were delegated to the Secretary of Defense by section 1(o) of Ex. Ord. No. 11958, Jan. 18, 1977.

## G. NARCOTICS RELATED LAWS

### SELECTED PROVISIONS OF THE ANTI-DRUG ABUSE ACT OF 1988

\* \* \* \* \*

## TITLE I—COORDINATION OF NATIONAL DRUG POLICY

### Subtitle A—National Drug Control Program <sup>1</sup>

**SEC. 1001. [21 U.S.C. 1501 nt] SHORT TITLE.**

This subtitle may be cited as the “National Narcotics Leadership Act of 1988”.

**SEC. 1007. TERMINATION OF NATIONAL DRUG ENFORCEMENT POLICY BOARD, NATIONAL NARCOTICS BORDER INTERDICTION SYSTEM, AND WHITE HOUSE DRUG ABUSE POLICY OFFICE.**

(a) [21 U.S.C. 1501 nt] NATIONAL DRUG ENFORCEMENT POLICY BOARD.—(1) The National Drug Enforcement Policy Board is terminated effective on the 30th day after the first Director is confirmed by the Senate. Upon such termination, all records and property of the National Drug Enforcement Policy Board shall be transferred to the Director. The Director of the Office of Management and Budget shall take such actions as are necessary to facilitate such transfer.

(2) All strategies, implementation plans, memoranda of understanding, and directives that have been issued or made by the National Drug Policy Board before the effective date of this subtitle shall continue in effect until modified, terminated, superseded, set aside, or revoked by the President or the Director.

(3) The National Narcotics Act of 1984 (21 U.S.C. 1201 et seq.) is repealed effective on the 30th day after the first Director is confirmed by the Senate.

<sup>1</sup> Section 1009 of this Act provides:

“SEC. 1009. TERMINATION OF OFFICE OF NATIONAL DRUG CONTROL POLICY.

“This subtitle and the amendments made by this subtitle, other than section 1007, are repealed on September 30, 1997.”.

Section 2(b) of the Drug-Free Communities Act of 1997 (P.L. 105–20; 111 Stat. 234) provides: “(b) REFERENCES.—Each reference in Federal law to subtitle A of the Anti-Drug Abuse Act of 1988, with the exception of section 1001 of such subtitle, in any provision of law that is in effect on the day before the date of enactment of this Act shall be deemed to be a reference to chapter 1 of the National Narcotics Leadership Act of 1988 (as so designated by this section).”.

Therefore, the repeal of subtitle A (section 1009 of the Anti-Drug Abuse Act of 1988) has been deemed to be a reference to Chapter 1, as added by section 2(a)(1) of the Drug-Free Communities Act of 1997 (P.L. 105–20; 111 Stat. 224).

(b) [21 U.S.C. 1501 nt] NATIONAL NARCOTICS BORDER INTERDICTION SYSTEM.—Notwithstanding any other provision of law, no funds may be expended after 30 days after the date on which the first Director is confirmed by the Senate for any activities or operations of the entity otherwise known as the National Narcotics Border Interdiction System.

(c) WHITE HOUSE OFFICE OF DRUG ABUSE POLICY.—(1) Sections 103, 201, 202, 203, 204, and 206 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1103, 1111, 1112, 1113, 1114, and 1116) are repealed. Section 205 of such Act is redesignated as section 201.

(2) [21 U.S.C. 1501 nt] The White House Office of Drug Abuse Policy shall terminate on the 30th day after the date on which the first Director is confirmed by the Senate.

(3) Section 5314 of title 5, United States Code, is amended by striking “Director of the Office of Drug Abuse Policy.”.

(4) Section 5315 of title 5, United States Code, is amended by striking “Deputy Director of the Office of Drug Abuse Policy.”.

## CHAPTER 2—DRUG-FREE COMMUNITIES

### SEC. 1021. [21 U.S.C. 1521] FINDINGS.

Congress finds the following:

(1) Substance abuse among youth has more than doubled in the 5-year period preceding 1996, with substantial increases in the use of marijuana, inhalants, cocaine, methamphetamine, LSD, and heroin.

(2) The most dramatic increases in substance abuse has occurred among 13- and 14-year-olds.

(3) Casual or periodic substance abuse by youth today will contribute to hard core or chronic substance abuse by the next generation of adults.

(4) Substance abuse is at the core of other problems, such as rising violent teenage and violent gang crime, increasing health care costs, HIV infections, teenage pregnancy, high school dropouts, and lower economic productivity.

(5) Increases in substance abuse among youth are due in large part to an erosion of understanding by youth of the high risks associated with substance abuse, and to the softening of peer norms against use.

(6)(A) Substance abuse is a preventable behavior and a treatable disease; and

(B)(i) during the 13-year period beginning with 1979, monthly use of illegal drugs among youth 12 to 17 years of age declined by over 70 percent; and

(ii) data suggests that if parents would simply talk to their children regularly about the dangers of substance abuse, use among youth could be expected to decline by as much as 30 percent.

(7) Community anti-drug coalitions throughout the United States are successfully developing and implementing comprehensive, long-term strategies to reduce substance abuse among youth on a sustained basis.

(8) Intergovernmental cooperation and coordination through national, State, and local or tribal leadership and

partnerships are critical to facilitate the reduction of substance abuse among youth in communities throughout the United States.

**SEC. 1022. [21 U.S.C. 1522] PURPOSES.**

The purposes of this chapter are—

(1) to reduce substance abuse among youth in communities throughout the United States, and over time, to reduce substance abuse among adults;

(2) to strengthen collaboration among communities, the Federal Government, and State, local, and tribal governments;

(3) to enhance intergovernmental cooperation and coordination on the issue of substance abuse among youth;

(4) to serve as a catalyst for increased citizen participation and greater collaboration among all sectors and organizations of a community that first demonstrates a long-term commitment to reducing substance abuse among youth;

(5) to rechannel resources from the fiscal year 1998 Federal drug control budget to provide technical assistance, guidance, and financial support to communities that demonstrate a long-term commitment in reducing substance abuse among youth;

(6) to disseminate to communities timely information regarding the state-of-the-art practices and initiatives that have proven to be effective in reducing substance abuse among youth;

(7) to enhance, not supplant, local community initiatives for reducing substance abuse among youth; and

(8) to encourage the creation of and support for community anti-drug coalitions throughout the United States.

**SEC. 1023. [21 U.S.C. 1523] DEFINITIONS.**

In this chapter:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator appointed by the Director under section 1031(c).

(2) ADVISORY COMMISSION.—The term “Advisory Commission” means the Advisory Commission established under section 1041.

(3) COMMUNITY.—The term “community” shall have the meaning provided that term by the Administrator, in consultation with the Advisory Commission.

(4) DIRECTOR.—The term “Director” means the Director of the Office of National Drug Control Policy.

(5) ELIGIBLE COALITION.—The term “eligible coalition” means a coalition that meets the applicable criteria under section 1032(a).

(6) GRANT RECIPIENT.—The term “grant recipient” means the recipient of a grant award under section 1032.

(7) NONPROFIT ORGANIZATION.—The term “nonprofit organization” means an organization described under section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

(8) PROGRAM.—The term “Program” means the program established under section 1031(a).

(9) **SUBSTANCE ABUSE.**—The term “substance abuse” means—

(A) the illegal use or abuse of drugs, including substances listed in schedules I through V of section 112 of the Controlled Substances Act (21 U.S.C. 812);

(B) the abuse of inhalants; or

(C) the use of alcohol, tobacco, or other related product as such use is prohibited by State or local law.

(10) **YOUTH.**—The term “youth” shall have the meaning provided that term by the Administrator, in consultation with the Advisory Commission.

**SEC. 1024. [21 U.S.C. 1524] AUTHORIZATION OF APPROPRIATIONS.**

(a) **IN GENERAL.**—There are authorized to be appropriated to the Office of National Drug Control Policy to carry out this chapter—

- (1) \$10,000,000 for fiscal year 1998;
- (2) \$20,000,000 for fiscal year 1999;
- (3) \$30,000,000 for fiscal year 2000;
- (4) \$40,000,000 for fiscal year 2001; and
- (5) \$43,500,000 for fiscal year 2002.

(b) **ADMINISTRATIVE COSTS.**—Not more than the following percentages of the amounts authorized under subsection (a) may be used to pay administrative costs:

- (1) 10 percent for fiscal year 1998.
- (2) 6 percent for fiscal year 1999.
- (3) 4 percent for fiscal year 2000.
- (4) 3 percent for fiscal year 2001.
- (5) 3 percent for fiscal year 2002.

**Subchapter I—Drug-Free Communities Support Program**

**SEC. 1031. [21 U.S.C. 1531] ESTABLISHMENT OF DRUG-FREE COMMUNITIES SUPPORT PROGRAM.**

(a) **ESTABLISHMENT.**—The Director shall establish a program to support communities in the development and implementation of comprehensive, long-term plans and programs to prevent and treat substance abuse among youth.

(b) **PROGRAM.**—In carrying out the Program, the Director shall—

- (1) make and track grants to grant recipients;
- (2) provide for technical assistance and training, data collection, and dissemination of information on state-of-the-art practices that the Director determines to be effective in reducing substance abuse; and
- (3) provide for the general administration of the Program.

(c) **ADMINISTRATION.**—Not later than 30 days after receiving recommendations from the Advisory Commission under section 1042(a)(1), the Director shall appoint an Administrator to carry out the Program.

(d) **CONTRACTING.**—The Director may employ any necessary staff and may enter into contracts or agreements with national drug control agencies, including interagency agreements to delegate authority for the execution of grants and for such other activities necessary to carry out this chapter.

**SEC. 1032. [21 U.S.C. 1532] PROGRAM AUTHORIZATION.**

(a) GRANT ELIGIBILITY.—To be eligible to receive an initial grant or a renewal grant under this subchapter, a coalition shall meet each of the following criteria:

(1) APPLICATION.—The coalition shall submit an application to the Administrator in accordance with section 1033(a)(2).

(2) MAJOR SECTOR INVOLVEMENT.—

(A) IN GENERAL.—The coalition shall consist of 1 or more representatives of each of the following categories:

(i) Youth.

(ii) Parents.

(iii) Businesses.

(iv) The media.

(v) Schools.

(vi) Organizations serving youth.

(vii) Law enforcement.

(viii) Religious or fraternal organizations.

(ix) Civic and volunteer groups.

(x) Health care professionals.

(xi) State, local, or tribal governmental agencies with expertise in the field of substance abuse (including, if applicable, the State authority with primary authority for substance abuse).

(xii) Other organizations involved in reducing substance abuse.

(B) ELECTED OFFICIALS.—If feasible, in addition to representatives from the categories listed in subparagraph (A), the coalition shall have an elected official (or a representative of an elected official) from—

(i) the Federal Government; and

(ii) the government of the appropriate State and political subdivision thereof or the governing body or an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination Act (25 U.S.C. 450b(e))).

(C) REPRESENTATION.—An individual who is a member of the coalition may serve on the coalition as a representative of not more than 1 category listed under subparagraph (A).

(3) COMMITMENT.—The coalition shall demonstrate, to the satisfaction of the Administrator—

(A) that the representatives of the coalition have worked together on substance abuse reduction initiatives, which, at a minimum, includes initiatives that target drugs referenced in section 1023(9)(A), for a period of not less than 6 months, acting through entities such as task forces, subcommittees, or community boards; and

(B) substantial participation from volunteer leaders in the community involved (especially in cooperation with individuals involved with youth such as parents, teachers, coaches, youth workers, and members of the clergy).

(4) MISSION AND STRATEGIES.—The coalition shall, with respect to the community involved—

(A) have as its principal mission the reduction of substance abuse, which, at a minimum, includes the use and

abuse of drugs referenced in section 1023(9)(A), in a comprehensive and long-term manner, with a primary focus on youth in the community;

(B) describe and document the nature and extent of the substance abuse problem, which, at a minimum, includes the use and abuse of drugs referenced in section 1023(9)(A), in the community;

(C)(i) provide a description of substance abuse prevention and treatment programs and activities, which, at a minimum, includes programs and activities relating to the use and abuse of drugs referenced in section 1023(9)(A), in existence at the time of the grant application; and

(ii) identify substance abuse programs and service gaps, which, at a minimum, includes programs and gaps relating to the use and abuse of drugs referenced in section 1023(9)(A), in the community;

(D) develop a strategic plan to reduce substance abuse among youth, which, at a minimum, includes the use and abuse of drugs referenced in section 1023(9)(A), in a comprehensive and long-term fashion; and

(E) work to develop a consensus regarding the priorities of the community to combat substance abuse among youth, which, at a minimum, includes the use and abuse of drugs referenced in section 1023(9)(A).

(5) SUSTAINABILITY.—The coalition shall demonstrate that the coalition is an ongoing concern by demonstrating that the coalition—

(A) is—

(i)(I) a nonprofit organization; or

(II) an entity that the Administrator determines to be appropriate; or

(ii) part of, or is associated with, an established legal entity;

(B) receives financial support (including, in the discretion of the Administrator, in-kind contributions) from non-Federal sources; and

(C) has a strategy to solicit substantial financial support from non-Federal sources to ensure that the coalition and the programs operated by the coalition are self-sustaining.

(6) ACCOUNTABILITY.—The coalition shall—

(A) establish a system to measure and report outcomes—

(i) consistent with common indicators and evaluation protocols established by the Administrator; and

(ii) approved by the Administrator;

(B) conduct—

(i) for an initial grant under this subchapter, an initial benchmark survey of drug use among youth (or use local surveys or performance measures available or accessible in the community at the time of the grant application); and

(ii) biennial surveys (or incorporate local surveys in existence at the time of the evaluation) to measure the progress and effectiveness of the coalition; and

(C) provide assurances that the entity conducting an evaluation under this paragraph, or from which the coalition receives information, has experience—

(i) in gathering data related to substance abuse among youth; or

(ii) in evaluating the effectiveness of community anti-drug coalitions.

(b) GRANT AMOUNTS.—

(1) IN GENERAL.—

(A) GRANTS.—

(i) IN GENERAL.—Subject to clause (iv), for a fiscal year, the Administrator may grant to an eligible coalition under this paragraph, an amount not to exceed the amount of non-Federal funds raised by the coalition, including in-kind contributions, for that fiscal year.

(ii) SUSPENSION OF GRANTS.—If such grant recipient fails to continue to meet the criteria specified in subsection (a), the Administrator may suspend the grant, after providing written notice to the grant recipient and an opportunity to appeal.

(iii) RENEWAL GRANTS.—Subject to clause (iv), the Administrator may award a renewal grant to a grant recipient under this subparagraph for each fiscal year following the fiscal year for which an initial grant is awarded, in an amount not to exceed the amount of non-Federal funds raised by the coalition, including in-kind contributions, for that fiscal year, during the 4-year period following the period of the initial grant.

(iv) LIMITATION.—The amount of a grant award under this subparagraph may not exceed \$100,000 for a fiscal year.

(B) COALITION AWARDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Administrator may, with respect to a community, make a grant to 1 eligible coalition that represents that community.

(ii) EXCEPTION.—The Administrator may make a grant to more than 1 eligible coalition that represents a community if—

(I) the eligible coalitions demonstrate that the coalitions are collaborating with one another; and

(II) each of the coalitions has independently met the requirements set forth in subsection (a).

(2) RURAL COALITION GRANTS.—

(A) IN GENERAL.—

(i) IN GENERAL.—In addition to awarding grants under paragraph (1), to stimulate the development of coalitions in sparsely populated and rural areas, the Administrator, in consultation with the Advisory Commission, may award a grant in accordance with this section to a coalition that represents a county with a population that does not exceed 30,000 individuals. In awarding a grant under this paragraph, the Administrator may waive any requirement under subsection

(a) if the Administrator considers that waiver to be appropriate.

(ii) **MATCHING REQUIREMENT.**—Subject to subparagraph (C), for a fiscal year, the Administrator may grant to an eligible coalition under this paragraph, an amount not to exceed the amount of non-Federal funds raised by the coalition, including in-kind contributions, for that fiscal year.

(iii) **SUSPENSION OF GRANTS.**—If such grant recipient fails to continue to meet any criteria specified in subsection (a) that has not been waived by the Administrator pursuant to clause (i), the Administrator may suspend the grant, after providing written notice to the grant recipient and an opportunity to appeal.

(B) **RENEWAL GRANTS.**—The Administrator may award a renewal grant to an eligible coalition that is a grant recipient under this paragraph for each fiscal year following the fiscal year for which an initial grant is awarded, in an amount not to exceed the amount of non-Federal funds raised by the coalition, including in-kind contributions, during the 4-year period following the period of the initial grant.

(C) **LIMITATIONS.**—

(i) **AMOUNT.**—The amount of a grant award under this paragraph shall not exceed \$100,000 for a fiscal year.

(ii) **AWARDS.**—With respect to a county referred to in subparagraph (A), the Administrator may award a grant under this section to not more than 1 eligible coalition that represents the county.

**SEC. 1033. [21 U.S.C. 1533] INFORMATION COLLECTION AND DISSEMINATION WITH RESPECT TO GRANT RECIPIENTS.**

(a) **COALITION INFORMATION.**—

(1) **GENERAL AUDITING AUTHORITY.**—For the purpose of audit and examination, the Administrator—

(A) shall have access to any books, documents, papers, and records that are pertinent to any grant or grant renewal request under this chapter; and

(B) may periodically request information from a grant recipient to ensure that the grant recipient meets the applicable criteria under section 1032(a).

(2) **APPLICATION PROCESS.**—The Administrator shall issue a request for proposal regarding, with respect to the grants awarded under section 1032, the application process, grant renewal, and suspension or withholding of renewal grants. Each application under this paragraph shall be in writing and shall be subject to review by the Administrator.

(3) **REPORTING.**—The Administrator shall, to the maximum extent practicable and in a manner consistent with applicable law, minimize reporting requirements by a grant recipient and expedite any application for a renewal grant made under this subchapter.

(b) **DATA COLLECTION AND DISSEMINATION.**—

(1) **IN GENERAL.**—The Administrator may collect data from—

- (A) national substance abuse organizations that work with eligible coalitions, community anti-drug coalitions, departments or agencies of the Federal Government, or State or local governments and the governing bodies of Indian tribes; and
  - (B) any other entity or organization that carries out activities that relate to the purposes of the Program.
- (2) ACTIVITIES OF ADMINISTRATOR.—The Administrator may—
- (A) evaluate the utility of specific initiatives relating to the purposes of the Program;
  - (B) conduct an evaluation of the Program; and
  - (C) disseminate information described in this subsection to—
    - (i) eligible coalitions and other substance abuse organizations; and
    - (ii) the general public.

**SEC. 1034. [21 U.S.C. 1534] TECHNICAL ASSISTANCE AND TRAINING.**

- (a) IN GENERAL.—
- (1) TECHNICAL ASSISTANCE AND AGREEMENTS.—With respect to any grant recipient or other organization, the Administrator may—
    - (A) offer technical assistance and training; and
    - (B) enter into contracts and cooperative agreements.
  - (2) COORDINATION OF PROGRAMS.—The Administrator may facilitate the coordination of programs between a grant recipient and other organizations and entities.
- (b) TRAINING.—The Administrator may provide training to any representative designated by a grant recipient in—
- (1) coalition building;
  - (2) task force development;
  - (3) mediation and facilitation, direct service, assessment and evaluation; or
  - (4) any other activity related to the purposes of the Program.

**Subchapter II—Advisory Commission**

**SEC. 1041. [21 U.S.C. 1541] ESTABLISHMENT OF ADVISORY COMMISSION.**

- (a) ESTABLISHMENT.—There is established a commission to be known as the “Advisory Commission on Drug-Free Communities”.
- (b) PURPOSE.—The Advisory Commission shall advise, consult with, and make recommendations to the Director concerning matters related to the activities carried out under the Program.

**SEC. 1042. [21 U.S.C. 1542] DUTIES.**

- (a) IN GENERAL.—The Advisory Commission—
- (1) shall, not later than 30 days after its first meeting, make recommendations to the Director regarding the selection of an Administrator;
  - (2) may make recommendations to the Director regarding any grant, contract, or cooperative agreement made by the Program;
  - (3) may make recommendations to the Director regarding the activities of the Program;

(4) may make recommendations to the Director regarding any policy or criteria established by the Director to carry out the Program;

(5) may—

(A) collect, by correspondence or by personal investigation, information concerning initiatives, studies, services, programs, or other activities of coalitions or organizations working in the field of substance abuse in the United States or any other country; and

(B) with the approval of the Director, make the information referred to in subparagraph (A) available through appropriate publications or other methods for the benefit of eligible coalitions and the general public; and

(6) may appoint subcommittees and convene workshops and conferences.

(b) RECOMMENDATIONS.—If the Director rejects any recommendation of the Advisory Commission under subsection (a)(1), the Director shall notify the Advisory Commission in writing of the reasons for the rejection not later than 15 days after receiving the recommendation.

(c) CONFLICT OF INTEREST.—A member of the Advisory Commission shall recuse himself or herself from any decision that would constitute a conflict of interest.

**SEC. 1043. [21 U.S.C. 1543] MEMBERSHIP.**

(a) IN GENERAL.—The President shall appoint 11 members to the Advisory Commission as follows:

(1) four members shall be appointed from the general public and shall include leaders—

(A) in fields of youth development, public policy, law, or business; or

(B) of nonprofit organizations or private foundations that fund substance abuse programs.

(2) four members shall be appointed from the leading representatives of national substance abuse reduction organizations, of which no fewer than three members shall have extensive training or experience in drug prevention.

(3) three members shall be appointed from the leading representatives of State substance abuse reduction organizations.

(b) CHAIRPERSON.—The Advisory Commission shall elect a chairperson or co-chairpersons from among its members.

(c) EX OFFICIO MEMBERS.—The ex officio membership of the Advisory Commission shall consist of any two officers or employees of the United States that the Director determines to be necessary for the Advisory Commission to effectively carry out its functions.

**SEC. 1044. [21 U.S.C. 1544] COMPENSATION.**

(a) IN GENERAL.—Members of the Advisory Commission who are officers or employees of the United States shall not receive any additional compensation for service on the Advisory Commission. The remaining members of the Advisory Commission shall receive, for each day (including travel time) that they are engaged in the performance of the functions of the Advisory Commission, compensation at rates not to exceed the daily equivalent to the annual rate of basic pay payable for grade GS-10 of the General Schedule.

(b) TRAVEL EXPENSES.—Each member of the Advisory Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

**SEC. 1045. [21 U.S.C. 1545] TERMS OF OFFICE.**

(a) IN GENERAL.—Subject to subsection (b), the term of office of a member of the Advisory Commission shall be 3 years, except that, as designated at the time of appointment—

(1) of the initial members appointed under section 1043(a)(1), two shall be appointed for a term of 2 years;

(2) of the initial members appointed under section 1043(a)(2), two shall be appointed for a term of 2 years; and

(3) of the initial members appointed under section 1043(a)(3), one shall be appointed for a term of 1 year.

(b) VACANCIES.—Any member appointed to fill a vacancy for an unexpired term of a member shall serve for the remainder of the unexpired term. A member of the Advisory Commission may serve after the expiration of such member's term until a successor has been appointed and taken office.

**SEC. 1046. [21 U.S.C. 1546] MEETINGS.**

(a) IN GENERAL.—After its initial meeting, the Advisory Commission shall meet, with the advanced approval of the Administrator, at the call of the Chairperson (or Co-chairpersons) of the Advisory Commission or a majority of its members or upon the request of the Director or Administrator of the Program.

(b) QUORUM.—Six members of the Advisory Commission shall constitute a quorum.

**SEC. 1047. [21 U.S.C. 1547] STAFF.**

The Administrator shall make available to the Advisory Commission adequate staff, information, and other assistance.

**SEC. 1048. [21 U.S.C. 1548] TERMINATION.**

The Advisory Commission shall terminate at the end of fiscal year 2002.

## **Subtitle B—Department of Justice Civil Enforcement Enhancement**

**SEC. 1051. SHORT TITLE.**

This subtitle may be cited as the “Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1988”.

**SEC. 1052. FINDINGS.**

The Congress finds that—

(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

(2) trends in drug trafficking patterns necessitate a response that gives appropriate weight to—

(A) the prosecution of drug-related crimes; and

(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and organized crime groups;

(3) law enforcement components of the Department of Justice should give high priority to the enforcement of civil sanctions against drug networks and organized crime groups; and

(4) the structure of the Department of Justice Criminal Division needs to be reviewed in order to determine the most effective structure to address such drug-related problems.

**SEC. 1053. CIVIL ENFORCEMENT REPORT.**

(a) REPORT.—Not later than 1 year after the date of the enactment of this title, the Director of National Drug Control Policy (the Director) in consultation with the Attorney General, shall report to the Congress on the necessity to establish a new division or make other organizational changes within the Department of Justice in order to promote better civil and criminal law enforcement. In preparing such report, the Director shall consider restructuring and consolidating one or more of the following divisions and programs—

(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

(3) the Asset Forfeiture Office of the Criminal Division; and

(4) the Organized Crime Drug Enforcement Task Force Program;

(b) LEGISLATIVE RECOMMENDATIONS.—The report submitted under subsection (a) shall include appropriate legislative recommendations for the Congress.

**SEC. 1054. CIVIL ENFORCEMENT ENHANCEMENT.**

(a) DUTY OF ATTORNEY GENERAL.—The Attorney General shall insure that each component of the Department of Justice having criminal law enforcement responsibilities with respect to the prosecution of organized crime and controlled substances violations, including each United States Attorney's Office, attaches a high priority to the enforcement of civil statutes creating ancillary sanctions and remedies for such violations, such as civil penalties and actions, forfeitures, injunctions and restraining orders, and collection of fines.

(b) DUTY OF ASSOCIATE ATTORNEY GENERAL.—The Associate Attorney General shall be responsible for implementing the policy set forth in this subsection.

(c) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated \$3,000,000 for salaries and expenses to the Department of Justice General Legal Activities Account and \$3,000,000 for salaries and expenses for United States Attorneys for fiscal year 1989.

(2) Any appropriation of funds authorized under paragraph (1) shall be—

(A) in addition to any appropriations requested by the President in the 1989 fiscal year budget submitted by the President to the Congress on February 18, 1988, or provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989; and

(B) used to increase the number of field attorneys and related support staff over such personnel levels employed at the Department of Justice on September 30, 1988.

(3) Any increase in full-time equivalent positions described under paragraph (2)(B) shall be exclusively used for asset forfeiture and civil enforcement and be assigned to appropriate field offices of the Organized Crime and Racketeering Section and the Organized Crime Drug Enforcement Task Forces.

(d) REPORTING REQUIREMENT.—The Attorney General, at the end of each such fiscal year, shall file a report with the Congress setting forth the extent of such enforcement efforts, as well as the need for any enhancements in resources necessary to carry out this policy.

**SEC. 1055. EXPENSES OF TASK FORCES.**

(a) APPROPRIATIONS AND REIMBURSEMENTS PROCEDURE.—Beginning in fiscal year 1990, the Attorney General in his budget shall submit a separate appropriations request for expenses relating to all Federal agencies participating in the Organized Crime Drug Enforcement Task Forces. Such appropriations shall be made to the Department of Justice's Interagency Law Enforcement Appropriation Account for the Attorney General to make reimbursements to the involved agencies as necessary.

(b) ENHANCEMENT OF FIELD ACTIVITIES.—The appropriations and reimbursements procedure described under subsection (a) shall—

(1) provide for the flexibility of the Task Forces which is vital to success;

(2) permit Federal law enforcement resources to be shifted in response to changing patterns of organized criminal drug activities;

(3) permit the Attorney General to reallocate resources among the organizational components of the Task Forces and between regions without undue delay; and

(4) ensure that the Task Forces function as a unit, without the competition for resources among the participating agencies that would undermine the overall effort.

[28 U.S.C. 509 nt]

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## **TITLE IV—INTERNATIONAL NARCOTICS CONTROL**

[This title (excluding the heading and section 4702 (a) through (f)) was repealed by section 103(b) of the International Narcotics Control Corrections Act of 1994 (P.L. 103-447; 108 Stat. 4693).]

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## TITLE VI—ANTI-DRUG ABUSE AMENDMENTS ACT OF 1988

### SEC. 6001. [21 U.S.C. 801 nt] SHORT TITLE.

This title may be cited as the “Anti-Drug Abuse Amendments Act of 1988”.

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## Subtitle N—Sundry Criminal Provisions

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### SEC. 6483. AMENDMENT TO THE FEDERAL RULES OF CRIMINAL PROCEDURE.

The Federal Rules of Criminal Procedure are amended by adding after Rule 12.2 the following:

#### “Rule 12.3. Notice of Defense Based Upon Public Authority

“(a) NOTICE BY DEFENDANT; GOVERNMENT RESPONSE; DISCLOSURE OF WITNESSES.—

“(1) DEFENDANT’S NOTICE AND GOVERNMENT’S RESPONSE.—  
A defendant intending to claim a defense of actual or believed exercise of public authority on behalf of a law enforcement or Federal intelligence agency at the time of the alleged offense shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, serve upon the attorney for the Government a written notice of such intention and file a copy of such notice with the clerk. Such notice shall identify the law enforcement or Federal intelligence agency and any member of such agency on behalf of which and the period of time in which the defendant claims the actual or believed exercise of public authority occurred. If the notice identifies a Federal intelligence agency, the copy filed with the clerk shall be under seal. Within ten days after receiving the defendant’s notice, but in no event less than twenty days before the trial, the attorney for the Government shall serve upon the defendant or the defendant’s attorney a written response which shall admit or deny that the defendant exercised the public authority identified in the defendant’s notice.

“(2) DISCLOSURE OF WITNESSES.—At the time that the Government serves its response to the notice or thereafter, but in no event less than twenty days before the trial, the attorney for the Government may serve upon the defendant or the defendant’s attorney a written demand for the names and addresses of the witnesses, if any, upon whom the defendant intends to rely in establishing the defense identified in the notice. Within seven days after receiving the Government’s demand, the defendant shall serve upon the attorney for the Government a written statement of the names and addresses of any such witnesses. Within seven days after receiving the defendant’s written statement, the attorney for the Government shall serve upon the defendant or the defendant’s attorney a written statement of the names and addresses of the witnesses,

if any, upon whom the Government intends to rely in opposing the defense identified in the notice.

“(3) ADDITIONAL TIME.—If good cause is shown, the court may allow a party additional time to comply with any obligation imposed by this rule.

“(b) CONTINUING DUTY TO DISCLOSE.—If, prior to or during trial, a party learns of any additional witness whose identity, if known, should have been included in the written statement furnished under subdivision (a)(2) of this rule, that party shall promptly notify in writing the other party or the other party’s attorney of the name and address of any such witness.

“(c) FAILURE TO COMPLY.—If a party fails to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered in support of or in opposition to the defense, or enter such other order as it deems just under the circumstances. This rule shall not limit the right of the defendant to testify.

“(d) PROTECTIVE PROCEDURES UNAFFECTED.—This rule shall be in addition to and shall not supersede the authority of the court to issue appropriate protective orders, or the authority of the court to order that any pleading be filed under seal.

“(e) INADMISSIBILITY OF WITHDRAWN DEFENSE BASED UPON PUBLIC AUTHORITY.—Evidence of an intention as to which notice was given under subdivision (a), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.”.

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## TITLE VII—DEATH PENALTY AND OTHER CRIMINAL AND LAW ENFORCEMENT MATTERS

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### Subtitle O—Miscellaneous

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#### SEC. 7605. USE OF EXISTING FEDERAL RESEARCH AND DEVELOPMENT FACILITIES FOR CIVILIAN LAW ENFORCEMENT.

(a) COMPREHENSIVE PLAN.—The President of the United States shall direct the Office of National Drug Control Policy, established in title I of this Act, to develop a comprehensive plan for utilizing no fewer than eight existing facilities of the Department of Defense, the Department of Justice, the Department of Energy, National Security Agency, and the Central Intelligence Agency, to develop technologies for application to Federal law enforcement agency missions, and to provide research, development, technology, and evaluation support to the law enforcement agencies of the Federal Government. Such plan shall be prepared and submitted to the Congress by no later than 90 days from the date of enactment of this Act.

(b) EXISTING FACILITIES TO BE EXAMINED.—The following existing United States Government facilities shall be examined in developing the comprehensive plan mandated in subsection (a):

(1) For night vision research and development—Department of Defense, Army Materiel Command, Night Vision Laboratory at Fort Belvoir, Virginia;

(2) For ground sensor research and development—Department of Defense, Army Materiel Command, Communications Electronic Command, Fort Monmouth, New Jersey;

(3) For physical/electronic security research and development—Department of Defense, Air Force Systems Command, Electronic Systems Division, Hanscom Field, Massachusetts;

(4) For imaging/electronic surveillance research and development—Central Intelligence Agency and National Security Agency, Washington, DC;

(5) For chemical/biosensor research and development—Department of Defense, Army Materiel Command, Chemical Research Development and Engineering Center, Aberdeen, Maryland;

(6) For chemical/molecular detector research and development—Department of Energy, Sandia National Laboratories, Albuquerque, New Mexico;

(7) For physical/electronic surveillance and tracking, research and development—Department of Justice, Federal Bureau of Investigation and Drug Enforcement Administration, Washington, DC; and

(8) For explosives ordnance detection research and development—Department of Defense, Naval Ordnance Station, Indian Head, Maryland.

(c) PARTICIPATION.—In developing the plan mandated in subsection (a), the Director of National Drug Control Policy shall ensure that representatives of the Federal law enforcement agencies are provided an opportunity to participate in the formulation of the comprehensive plan and that their views and recommendations are integrated into the planning process.

(d) COMPTROLLER GENERAL OVERSIGHT.—The Comptroller General of the United States shall monitor the development of the plan mandated in subsection (a) and report periodically to the appropriate Committees of the Congress on the progress of the development of this research and development program. This subsection does not confer authority upon the Comptroller General, additional to that otherwise provided by law, to gain access to sensitive information held by any agency within the intelligence community.

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**SECTION 124 OF TITLE 10, UNITED STATES CODE**

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**CHAPTER 3—GENERAL POWERS AND FUNCTIONS**

\* \* \* \* \*

**§ 124. Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency**

(a) LEAD AGENCY.—(1) The Department of Defense shall serve as the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States.

(2) The responsibility conferred by paragraph (1) shall be carried out in support of the counter-drug activities of Federal, State, local, and foreign law enforcement agencies.

(b) PERFORMANCE OF DETECTION AND MONITORING FUNCTION.—(1) To carry out subsection (a), Department of Defense personnel may operate equipment of the Department to intercept a vessel or an aircraft detected outside the land area of the United States for the purposes of—

(A) identifying and communicating with that vessel or aircraft; and

(B) directing that vessel or aircraft to go to a location designated by appropriate civilian officials.

(2) In cases in which a vessel or an aircraft is detected outside the land area of the United States, Department of Defense personnel may begin or continue pursuit of that vessel or aircraft over the land area of the United States.

(c) UNITED STATES DEFINED.—In this section, the term “United States” means the land area of the several States and any territory, commonwealth, or possession of the United States.

**SECTION 1012 OF THE NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEAR 1995**

**SEC. 1012. [22 U.S.C. 2291-4] OFFICIAL IMMUNITY FOR AUTHORIZED  
EMPLOYEES AND AGENTS OF THE UNITED STATES AND  
FOREIGN COUNTRIES ENGAGED IN INTERDICTION OF  
AIRCRAFT USED IN ILLICIT DRUG TRAFFICKING.**

(a) EMPLOYEES AND AGENTS OF FOREIGN COUNTRIES.—Notwithstanding any other provision of law, it shall not be unlawful for authorized employees or agents of a foreign country (including members of the armed forces of that country) to interdict or attempt to interdict an aircraft in that country's territory or airspace if—

(1) that aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking; and

(2) the President of the United States has, during the 12-month period ending on the date of the interdiction, certified to Congress with respect to that country that—

(A) interdiction is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and

(B) the country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force directed against the aircraft.

(b) EMPLOYEES AND AGENTS OF THE UNITED STATES.—Notwithstanding any other provision of law, it shall not be unlawful for authorized employees or agents of the United States (including members of the Armed Forces of the United States) to provide assistance for the interdiction actions of foreign countries authorized under subsection (a). The provision of such assistance shall not give rise to any civil action seeking money damages or any other form of relief against the United States or its employees or agents (including members of the Armed Forces of the United States).

(c) ANNUAL REPORT.—(1) Except as provided in paragraph (2), not later than February 1 each year, the President shall submit to Congress a report on the assistance provided under subsection (b) during the preceding calendar year. Each report shall include for the calendar year covered by such report the following:

(A) A list specifying each country for which a certification referred to in subsection (a)(2) was in effect for purposes of that subsection during any portion of such calendar year, including the nature of the illicit drug trafficking threat to each such country.

(B) A detailed explanation of the procedures referred to in subsection (a)(2)(B) in effect for each country listed under sub-

paragraph (A), including any training and other mechanisms in place to ensure adherence to such procedures.

(C) A complete description of any assistance provided under subsection (b).

(D) A summary description of the aircraft interception activity for which the United States Government provided any form of assistance under subsection (b).

(2) In the case of a report required to be submitted under paragraph (1) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.

(3) Each report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(d) DEFINITIONS.—For purposes of this section:

(1) The terms “interdict” and “interdiction”, with respect to an aircraft, mean to damage, render inoperative, or destroy the aircraft.

(2) The term “illicit drug trafficking” means illicit trafficking in narcotic drugs, psychotropic substances, and other controlled substances, as such activities are described by any international narcotics control agreement to which the United States is a signatory, or by the domestic law of the country in whose territory or airspace the interdiction is occurring.

(3) The term “assistance” includes operational, training, intelligence, logistical, technical, and administrative assistance.



## H. MERCENARY LAWS

### SECTIONS 956 THROUGH 960 OF TITLE 18, UNITED STATES CODE (CERTAIN PRIVATE ACTIVITIES WITH RESPECT TO FOREIGN COUNTRIES)

#### **§956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country**

(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

(2) The punishment for an offense under subsection (a)(1) of this section is—

(A) imprisonment for any term of years or for life if the offense is conspiracy to murder or kidnap; and

(B) imprisonment for not more than 35 years if the offense is conspiracy to maim.

(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to damage or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated, shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than 25 years.

#### **§957. Possession of property in aid of foreign government**

Whoever, in aid of any foreign government, knowingly and willfully possesses or controls any property or papers used or designed or intended for use in violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined under this title or imprisoned not more than ten years, or both.

#### **§958. Commission to serve against friendly nation**

Any citizen of the United States who, within the jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, against any prince,

state, colony, district, or people, with whom the United States is at peace, shall be fined under this title or imprisoned not more than three years, or both.

**§ 959. Enlistment in foreign service**

(a) Whoever, within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board any vessel of war, letter of marque, or privateer, shall be fined under this title or imprisoned not more than three years, or both.

(b) This section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this subsection shall be under regulations prescribed by the Secretary of the Army.

(c) This section and sections 960 and 961 of this title shall not apply to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

**§ 960. Expedition against friendly nation**

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined under this title or imprisoned not than three years, or both.

**I. RESTRICTIONS ON EMPLOYMENT OF OFFICERS OF THE UNITED STATES<sup>1</sup>**

**CLAUSE 8 OF ARTICLE I, SECTION 9, OF THE UNITED STATES CONSTITUTION**

ARTICLE I

SECTION 1. \* \* \*

\* \* \* \* \*

SECTION 9. \* \* \*

\* \* \* \* \*

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

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<sup>1</sup>In connection with this subject, see also sections 2397a, 2397b, and 2397c of title 10, United States Code.

**SECTIONS 207 AND 219 OF TITLE 18, UNITED STATES  
CODE**

**§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches**

(a) RESTRICTIONS ON ALL OFFICERS AND EMPLOYEES OF THE EXECUTIVE BRANCH AND CERTAIN OTHER AGENCIES.—

(1) PERMANENT RESTRICTIONS ON REPRESENTATION ON PARTICULAR MATTERS.—Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,  
shall be punished as provided in section 216 of this title.

(2) TWO-YEAR RESTRICTIONS CONCERNING PARTICULAR MATTERS UNDER OFFICIAL RESPONSIBILITY.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(3) CLARIFICATION OF RESTRICTIONS.—<sup>1</sup>The restrictions contained in paragraphs (1) and (2) shall apply—

(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.

(b) ONE-YEAR RESTRICTIONS ON AIDING OR ADVISING.—

(1) IN GENERAL.—Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) DEFINITION.—For purposes of this paragraph—

(A) the term “trade negotiation” means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

<sup>1</sup>Section 330010(15) of P.L. 103-322 (108 Stat. 2144) amended this paragraph by striking “Clarification of Restrictions” and inserting “Clarification of restrictions”. The error is that the heading probably should have been amended by striking “CLARIFICATION OF RESTRICTIONS” and inserting “CLARIFICATION OF RESTRICTIONS”.

(B) the term “treaty” means an international agreement made by the President that requires the advice and consent of the Senate.

(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,

(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3,

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O-7 or above; or

(v) assigned from a private sector organization to an agency under chapter 37 of title 5.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship

on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(d) RESTRICTIONS ON VERY SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who—

(A) serves in the position of Vice President of the United States,

(B) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) PERSONS WHO MAY NOT BE CONTACTED.—The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

(e) RESTRICTIONS ON MEMBERS OF CONGRESS AND OFFICERS AND EMPLOYEES OF THE LEGISLATIVE BRANCH.—

(1) MEMBERS OF CONGRESS AND ELECTED OFFICERS.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either

House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) PERSONAL STAFF.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

(ii) any employee of that Senator or Member of the House of Representatives.

(3) COMMITTEE STAFF.—Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) LEADERSHIP STAFF.—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are

any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) OTHER LEGISLATIVE OFFICES.—(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) LIMITATION ON RESTRICTIONS.—(A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for level 5 of the Senior Executive Service.

(7) DEFINITIONS.—As used in this subsection—

(A) the term "committee of Congress" includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term "employee of the House of Representatives" means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

(D) the term "employee of the Senate" means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress

whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

(G) the term “employee of any other legislative office of the Congress” means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

(H) the term “employee on the leadership staff of the House of Representatives” means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

(I) the term “employee on the leadership staff of the Senate” means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

(J) the term “Member of Congress” means a Senator or a Member of the House of Representatives;

(K) the term “Member of the House of Representatives” means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term “Member of the leadership of the House of Representatives” means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term “Member of the leadership of the Senate” means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created on or after the effective date

set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) RESTRICTIONS RELATING TO FOREIGN ENTITIES.—

(1) RESTRICTIONS.—Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection—

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

(2) SPECIAL RULE FOR TRADE REPRESENTATIVE.—With respect to a person who is the United States Trade Representative or Deputy United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities at any time after the termination of that person's service as the United States Trade Representative.

(3) DEFINITION.—For purposes of this subsection, the term "foreign entity" means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) SPECIAL RULES FOR DETAILEES.—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) DESIGNATIONS OF SEPARATE STATUTORY AGENCIES AND BUREAUS.—

(1) DESIGNATIONS.—For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) INAPPLICABILITY OF DESIGNATIONS.—No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A)(i) or (iii).

(i) DEFINITIONS.—For purposes of this section—

(1) the term “officer or employee”, when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include—

(A) in subsections (a), (c), and (d), the President and the Vice President; and

(B) in subsection (f), the President, the Vice President, and Members of Congress;

(2) the term “participated” means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) the term “particular matter” includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) EXCEPTIONS.—

(1) OFFICIAL GOVERNMENT DUTIES.—The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government.

(2) STATE AND LOCAL GOVERNMENTS AND INSTITUTIONS, HOSPITALS, AND ORGANIZATIONS.—The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—

(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

(B) an accredited, degree-granting institution of higher education, as defined in section 101 of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) INTERNATIONAL ORGANIZATIONS.—The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.

(4) SPECIAL KNOWLEDGE.—The restrictions contained in subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.

(5) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION.—The restrictions contained in subsections (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term “officer or employee” includes the Vice President.

(6) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence—

(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.

(7) POLITICAL PARTIES AND CAMPAIGN COMMITTEES.—(A) Except as provided in subparagraph (B), the restrictions contained in subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.

(B) Subparagraph (A) shall not apply to—

(i) any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or

(ii) a communication or appearance made by a person who is subject to the restrictions contained in subsections (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than—

(I) a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party; or

(II) a person or entity who represents, aids, or advises only persons or entities described in subclause (I).

(C) For purposes of this paragraph—

(i) the term “candidate” means any person who seeks nomination for election, or election, to Federal or State office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to Federal or State office;

(ii) the term “authorized committee” means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);

(iii) the term “national committee” means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;

(iv) the term “national Federal campaign committee” means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(v) the term “State committee” means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level;

(vi) the term “political party” means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and

(vii) the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k)(1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

(B)(i) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person’s Federal Government employment is terminated

and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

(ii) Notwithstanding clause (i), a waiver granted under this paragraph to any person who was an officer or employee of Lawrence Livermore National Laboratory, Los Alamos National Laboratory, or Sandia National Laboratory immediately before the person's Federal Government employment began shall apply to that person's employment by any such national laboratory after the person's employment by the Federal Government is terminated.

(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify—

(A) the officer or employee covered by the waiver by name and by position, and

(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

(4) The President may not delegate the authority provided by this subsection.

(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

(E) As used in this subsection, the term "civil service" has the meaning given that term in section 2101 of title 5.

(I) CONTRACT ADVICE BY FORMER DETAILS.—Whoever, being an employee of a private sector organization assigned to an agency under chapter 37 of title 5, within one year after the end of that assignment, knowingly represents or aids, counsels, or assists in representing any other person (except the United States) in connec-

tion with any contract with that agency shall be punished as provided in section 216 of this title.

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**§ 219. Officers and employees acting as agents of foreign principals**

(a) Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act shall be fined under this title or imprisoned for not more than two years, or both.

(b) Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.

(c) For the purpose of this section "public official" means Member of Congress, Delegate or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government.

**SECTION 908 OF TITLE 37, UNITED STATES CODE**

**§ 908. Employment of reserves and retired members by foreign governments**

(a) CONGRESSIONAL CONSENT.—Subject to subsection (b), Congress consents to the following persons accepting civil employment (and compensation for that employment) for which the consent of Congress is required by the last paragraph of section 9 of article I of the Constitution, related to acceptance of emoluments, offices, or titles from a foreign government:

- (1) Retired members of the uniformed services.
- (2) Members of a reserve component of the armed forces.
- (3) Members of the Commissioned Reserve Corps of the Public Health Service.

(b) APPROVAL REQUIRED.—A person described in subsection (a) may accept employment or compensation described in that subsection only if the Secretary concerned and the Secretary of State approve the employment.

(c) MILITARY SERVICE IN FOREIGN ARMED FORCES.—For a provision of law providing the consent of Congress to service in the military forces of certain foreign nations, see section 1060 of title 10.



## **J. PERSONNEL-RELATED LAWS**

### **CHAPTER 12 OF TITLE 5, UNITED STATES CODE (MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL)**

### **CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION**

#### **SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD**

- Sec. 1201. Appointment of members of the Merit Systems Protection Board.
- Sec. 1202. Term of office; filling vacancies; removal.
- Sec. 1203. Chairman; Vice Chairman.
- Sec. 1204. Powers and functions of the Merit Systems Protection Board.
- Sec. 1205. Transmittal of information to Congress.
- Sec. 1206. Annual report.

#### **SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL**

- Sec. 1211. Establishment.
- Sec. 1212. Powers and functions of the Office of Special Counsel.
- Sec. 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters.
- Sec. 1214. Investigation of prohibited personnel practices; corrective action.
- Sec. 1215. Disciplinary action.
- Sec. 1216. Other matters within the jurisdiction of the Office of Special Counsel.
- Sec. 1217. Transmittal of information to Congress.
- Sec. 1218. Annual report.
- Sec. 1219. Public information.

#### **SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN CERTAIN REPRISAL CASES**

- Sec. 1221. Individual right of action in certain reprisal cases.
- Sec. 1222. Availability of other remedies.

#### **SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD**

#### **§1201. Appointment of members of the Merit Systems Protection Board**

The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

**§ 1202. Term of office; filling vacancies; removal**

(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

(b) A member appointed to fill a vacancy occurring before the end of a term of office of the member's predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201. Any new member serving only a portion of a seven-year term in office may continue to serve until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire, unless reappointed.

(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire under this section.

(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

**§ 1203. Chairman; Vice Chairman**

(a) The President shall from time to time appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

(c) During the absence or disability of both the Chairman and the Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.

**§ 1204. Powers and functions of the Merit Systems Protection Board**

(a) The Merit Systems Protection Board shall—

(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, chapter 43 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) of this subsection and enforce compliance with any such order;

(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

(4) review, as provided in subsection (f), rules and regulations of the Office of Personnel Management.

(b)(1) Any member of the Merit Systems Protection Board, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) Any member of the Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may, with respect to any individual—

(A) issue subpoenas requiring the attendance and presentation of testimony of any such individual, and the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

(B) order the taking of depositions from, and responses to written interrogatories by, any such individual.

(3) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b)(2)(A) or section 1214(b), upon application by the Board, the United States district court for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) A subpoena referred to in subsection (b)(2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in such manner as the Federal Rules of Civil Procedure prescribe for service of a subpoena in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such individual, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance under this subsection by such individual that such court would have if such individual were personally within the jurisdiction of such court.

(e)(1)(A) In any proceeding under subsection (a)(1), any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Management.

(B)(i) The Merit Systems Protection Board may, during an investigation by the Office of Special Counsel or during the pendency of any proceeding before the Board, issue any order which may be necessary to protect a witness or other individual from harassment, except that an agency (other than the Office of Special Counsel) may not request any such order with regard to an investigation by the Office of Special Counsel from the Board during such investigation.

(ii) An order issued under this subparagraph may be enforced in the same manner as provided for under paragraph (2) with respect to any order under subsection (a)(2).

(2)(A) In enforcing compliance with any order under subsection (a)(2), the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued and no payment shall be made out of the Treasury of the United States for any service specified in such order.

(B) The Board shall prescribe regulations under which any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board to exercise its authority under subparagraph (A).

(3) In carrying out any study under subsection (a)(3), the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed.

(f)(1) At any time after the effective date of any rule or regulation issued by the Director of the Office of Personnel Management in carrying out functions under section 1103, the Board shall review any provision of such rule or regulation—

(A) on its own motion;

(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

(C) on the filing of a written complaint by the Special Counsel requesting such review.

(2) In reviewing any provision of any rule or regulation pursuant to this subsection, the Board shall declare such provision—

(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b); or

(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302(b).

(3) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

(4) The Board shall require any agency—

(A) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

(B) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board de-

clares under this subsection to have been invalidly implemented by the agency.

(g) The Board may delegate the performance of any of its administrative functions under this title to any employee of the Board.

(h) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

(j) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

(k) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

(l) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

(m)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case arising under section 1215, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee (as the case may be) determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(2) If an employee or applicant for employment is the prevailing party of a case arising under section 1215 and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

#### **§ 1205. Transmittal of information to Congress**

Notwithstanding any other provision of law or any rule, regulation or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on func-

tions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

**§ 1206. Annual report**

The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

**[§§ 1207, 1208. Repealed. Pub. L. 101-12, § 3(a)(8), Apr. 10, 1989, 103 Stat. 18.]**

SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

**§ 1211. Establishment**

(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.

(b) The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection. The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President.

**§ 1212. Powers and functions of the Office of Special Counsel**

(a) The Office of Special Counsel shall—

(1) in accordance with section 1214(a) and other applicable provisions of this subchapter, protect employees, former employees, and applicants for employment from prohibited personnel practices;

(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate—

(A) bring petitions for stays, and petitions for corrective action, under section 1214; and

(B) file a complaint or make recommendations for disciplinary action under section 1215;

(3) receive, review, and, where appropriate, forward to the Attorney General or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(4) review rules and regulations issued by the Director of the Office of Personnel Management in carrying out functions under section 1103 and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, require the commission of a prohibited personnel practice, file a written complaint with the Board; and

(5) investigate and, where appropriate, bring actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel (as referred to in section 1216).

(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) The Special Counsel may—

(A) issue subpoenas; and

(B) order the taking of depositions and order responses to written interrogatories;

in the same manner as provided under section 1204.

(3)(A) In the case of contumacy or failure to obey a subpoena issued under paragraph (2)(A), the Special Counsel may apply to the Merit Systems Protection Board to enforce the subpoena in court pursuant to section 1204(c).

(B) A subpoena under paragraph (2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in the manner referred to in subsection (d) of section 1204, and the United States District Court for the District of Columbia may, with respect to any such individual, compel compliance in accordance with such subsection.

(4) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(c)(1) Except as provided in paragraph (2), the Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board.

(2) The Special Counsel may not intervene in an action brought by an individual under section 1221, or in an appeal brought by an individual under section 7701, without the consent of such individual.

(d)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

(e) The Special Counsel may prescribe such regulations as may be necessary to perform the functions of the Special Counsel. Such regulations shall be published in the Federal Register.

(f) The Special Counsel may not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73).

(g)(1) The Special Counsel may not respond to any inquiry or disclose any information from or about any person making an allegation under section 1214(a), except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(2) Notwithstanding the exception under paragraph (1), the Special Counsel may not respond to any inquiry concerning an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability for any personnel action of any person described in paragraph (1)—

(A) unless the consent of the individual as to whom the information pertains is obtained in advance; or

(B) except upon request of an agency which requires such information in order to make a determination concerning an individual's having access to the information unauthorized disclosure of which could be expected to cause exceptionally grave damage to the national security.

**§ 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters**

(a) This section applies with respect to—

(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and

(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) Whenever the Special Counsel receives information of a type described in subsection (a) of this section, the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse

of authority, or substantial and specific danger to public health and safety.

(c)(1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b) of this section, the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head—

(A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and

(B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Counsel.

(2) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by—

(A) an employee, former employee, or applicant for employment in the agency which the information concerns; or

(B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

(d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—

(1) a summary of the information with respect to which the investigation was initiated;

(2) a description of the conduct of the investigation;

(3) a summary of any evidence obtained from the investigation;

(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

(5) a description of any action taken or planned as a result of the investigation, such as—

(A) changes in agency rules, regulations, or practices;

(B) the restoration of any aggrieved employee;

(C) disciplinary action against any employee; and

(D) referral to the Attorney General of any evidence of a criminal violation.

(e)(1) Any such report shall be submitted to the Special Counsel, and the Special Counsel shall transmit a copy to the complainant, except as provided under subsection (f) of this section. The complainant may submit comments to the Special Counsel on the agency report within 15 days of having received a copy of the report.

(2) Upon receipt of any report of the head of an agency required under subsection (c) of this section, the Special Counsel shall review the report and determine whether—

(A) the findings of the head of the agency appear reasonable; and

(B) the report of the agency under subsection (c)(1) of this section contains the information required under subsection (d) of this section.

(3) The Special Counsel shall transmit any agency report received pursuant to subsection (c) of this section, any comments pro-

vided by the complainant pursuant to subsection (e)(1), and any appropriate comments or recommendations by the Special Counsel to the President and the congressional committees with jurisdiction over the agency which the disclosure involves.

(4) Whenever the Special Counsel does not receive the report of the agency within the time prescribed in subsection (c)(2) of this section, the Special Counsel shall transmit a copy of the information which was transmitted to the agency head to the President and the congressional committees with jurisdiction over the agency which the disclosure involves together with a statement noting the failure of the head of the agency to file the required report.

(f) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) of this section is referred to the Attorney General—

(1) the report shall not be transmitted to the complainant; and

(2) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

(g)(1) If the Special Counsel receives information of a type described in subsection (a) from an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2), the Special Counsel may transmit the information to the head of the agency which the information concerns. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action shall be completed. The Special Counsel shall inform the individual of the report of the agency head.

(2) If the Special Counsel receives information of a type described in subsection (a) from an individual described in subparagraph (A) or (B) of subsection (c)(2), but does not make a positive determination under subsection (b), the Special Counsel may transmit the information to the head of the agency which the information concerns, except that the information may not be transmitted to the head of the agency without the consent of the individual. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action will be completed. The Special Counsel shall inform the individual of the report of the agency head.

(3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall inform the individual of—

(A) the reasons why the disclosure may not be further acted on under this chapter; and

(B) other offices available for receiving disclosures, should the individual wish to pursue the matter further.

(h) The identity of any individual who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without such individual's consent unless the Special Counsel determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.

(i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—

(1) specifically prohibited from disclosure by any other provision of law; or

(2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the National Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.

**§ 1214. Investigation of prohibited personnel practices; corrective action**

(a)(1)(A) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(B) Within 15 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall provide written notice to the person who made the allegation that—

(i) the allegation has been received by the Special Counsel; and

(ii) shall include the name of a person at the Office of Special Counsel who shall serve as a contact with the person making the allegation.

(C) Unless an investigation is terminated under paragraph (2), the Special Counsel shall—

(i) within 90 days after notice is provided under subparagraph (B), notify the person who made the allegation of the status of the investigation and any action taken by the Office of the Special Counsel since the filing of the allegation;

(ii) notify such person of the status of the investigation and any action taken by the Office of the Special Counsel since the last notice, at least every 60 days after notice is given under clause (i); and

(iii) notify such person of the status of the investigation and any action taken by the Special Counsel at such time as determined appropriate by the Special Counsel.

(D) No later than 10 days before the Special Counsel terminates any investigation of a prohibited personnel practice, the Special Counsel shall provide a written status report to the person who made the allegation of the proposed findings of fact and legal conclusions. The person may submit written comments about the report to the Special Counsel. The Special Counsel shall not be required to provide a subsequent written status report under this subparagraph after the submission of such written comments.

(2)(A) If the Special Counsel terminates any investigation under paragraph (1), the Special Counsel shall prepare and trans-

mit to any person on whose allegation the investigation was initiated a written statement notifying the person of—

- (i) the termination of the investigation;
- (ii) a summary of relevant facts ascertained by the Special Counsel, including the facts that support, and the facts that do not support, the allegations of such person;
- (iii) the reasons for terminating the investigation; and
- (iv) a response to any comments submitted under paragraph (1)(D).

(B) A written statement under subparagraph (A) may not be admissible as evidence in any judicial or administrative proceeding, without the consent of the person who received such statement under subparagraph (A).

(3) Except in a case in which an employee, former employee, or applicant for employment has the right to appeal directly to the Merit Systems Protection Board under any law, rule, or regulation, any such employee, former employee, or applicant shall seek corrective action from the Special Counsel before seeking corrective action from the Board. An employee, former employee, or applicant for employment may seek corrective action from the Board under section 1221, if such employee, former employee, or applicant seeks corrective action for a prohibited personnel practice described in section 2302(b)(8) from the Special Counsel and—

(A)(i) the Special Counsel notifies such employee, former employee, or applicant that an investigation concerning such employee, former employee, or applicant has been terminated; and

(ii) no more than 60 days have elapsed since notification was provided to such employee, former employee, or applicant for employment that such investigation was terminated; or

(B) 120 days after seeking corrective action from the Special Counsel, such employee, former employee, or applicant has not been notified by the Special Counsel that the Special Counsel shall seek corrective action on behalf of such employee, former employee, or applicant.

(4) If an employee, former employee, or applicant seeks a corrective action from the Board under section 1221, pursuant to the provisions of paragraph (3)(B), the Special Counsel may continue to seek corrective action personal to such employee, former employee, or applicant only with the consent of such employee, former employee, or applicant.

(5) In addition to any authority granted under paragraph (1), the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken.

(b)(1)(A)(i) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

(ii) Any member of the Board requested by the Special Counsel to order a stay under clause (i) shall order such stay unless the

member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

(iii) Unless denied under clause (ii), any stay under this subparagraph shall be granted, within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

(B) The Board may extend the period of any stay granted under subparagraph (A) for any period which the Board considers appropriate.

(C) The Board shall allow any agency which is the subject of a stay to comment to the Board on any extension of stay proposed under subparagraph (B)

(D) A stay may be terminated by the Board at any time, except that a stay may not be terminated by the Board—

(i) on its own motion or on the motion of an agency, unless notice and opportunity for oral or written comments are first provided to the Special Counsel and the individual on whose behalf the stay was ordered; or

(ii) on motion of the Special Counsel, unless notice and opportunity for oral or written comments are first provided to the individual on whose behalf the stay was ordered.

(2)<sup>1</sup>(A)(i) Except as provided under clause (ii), no later than 240 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(ii) If the Special Counsel is unable to make the required determination within the 240-day period specified under clause (i) and the person submitting the allegation of a prohibited personnel practice agrees to an extension of time, the determination shall be made within such additional period of time as shall be agreed upon between the Special Counsel and the person submitting the allegation.

(B) If, in connection with any investigation, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved and to the Office of Personnel Management, and may report such determination, findings and recommendations to the President. The Special Counsel may include in the report recommendations for corrective action to be taken.

(C) If, after a reasonable period of time, the agency does not act to correct the prohibited personnel practice, the Special Counsel may petition the Board for corrective action.

(D) If the Special Counsel finds, in consultation with the individual subject to the prohibited personnel practice, that the agency has acted to correct the prohibited personnel practice, the Special Counsel shall file such finding with the Board, together with any written comments which the individual may provide.

<sup>1</sup>The amendment made by section 3(d) of Public Law 103-424 (adding a new subparagraph (A)) was executed in a manner reflecting its probable intent.

(E) <sup>1</sup>A determination by the Special Counsel under this paragraph shall not be cited or referred to in any proceeding under this paragraph or any other administrative or judicial proceeding for any purpose, without the consent of the person submitting the allegation of a prohibited personnel practice.

(3) Whenever the Special Counsel petitions the Board for corrective action, the Board shall provide an opportunity for—

(A) oral or written comments by the Special Counsel, the agency involved, and the Office of Personnel Management; and

(B) written comments by any individual who alleges to be the subject of the prohibited personnel practice.

(4)(A) The Board shall order such corrective action as the Board considers appropriate, if the Board determines that the Special Counsel has demonstrated that a prohibited personnel practice, other than one described in section 2302(b)(8), has occurred, exists, or is to be taken.

(B)(i) Subject to the provisions of clause (ii), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the Special Counsel has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against the individual.

(ii) Corrective action under clause (i) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(c)(1) Judicial review of any final order or decision of the Board under this section may be obtained by any employee, former employee, or applicant for employment adversely affected by such order or decision.

(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

(d)(1) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that a criminal violation has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

(2) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding unless—

(A) the alleged violation has been reported to the Attorney General; and

(B) the Attorney General is pursuing an investigation, in which case the Special Counsel, after consultation with the Attorney General, has discretion as to whether to proceed.

(e) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable

<sup>1</sup> So in original.

cause to believe that any violation of any law, rule, or regulation has occurred other than one referred to in subsection (b) or (d), the Special Counsel shall report such violation to the head of the agency involved. The Special Counsel shall require, within 30 days after the receipt of the report by the agency, a certification by the head of the agency which states—

(1) that the head of the agency has personally reviewed the report; and

(2) what action has been or is to be taken, and when the action will be completed.

(f) During any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

(g) If the Board orders corrective action under this section, such corrective action may include—

(1) that the individual be placed, as nearly as possible, in the position the individual would have been in had the prohibited personnel practice not occurred; and

(2) reimbursement for attorney's fees, back pay and related benefits, medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential damages.

#### **§ 1215. Disciplinary action**

(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having—

(A) committed a prohibited personnel practice,

(B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216, or

(C) knowingly and willfully refused or failed to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—

(A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

(B) be represented by an attorney or other representative;

(C) a hearing before the Board or an administrative law judge appointed under section 3105 and designated by the Board;

(D) have a transcript kept of any hearing under subparagraph (C); and

(E) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

(3) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal

employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000.

(4) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefor with such court, and within such time, as provided for under section 7703(b).

(5) In the case of any State or local officer or employee under chapter 15, the Board shall consider the case in accordance with the provisions of such chapter.

(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

(c)(1) In the case of members of the uniformed services and individuals employed by any person under contract with an agency to provide goods or services, the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the agency concerned.

(2) In any case in which the Special Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on each recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.

**§ 1216. Other matters within the jurisdiction of the Office of Special Counsel**

(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning—

(1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees;

(2) political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees;

(3) arbitrary or capricious withholding of information prohibited under section 552, except that the Special Counsel shall make no investigation of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

(b) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in subsection (a)(5),

if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

(c) If the Special Counsel receives an allegation concerning any matter under paragraph (1), (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 and disciplinary action under section 1215 in the same way as if a prohibited personnel practice were involved.

#### **§ 1217. Transmittal of information to Congress**

The Special Counsel or any employee of the Special Counsel designated by the Special Counsel, shall transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and the Special Counsel's views on functions, responsibilities, or other matters relating to the Office. Such information shall be transmitted concurrently to the President and any other appropriate agency in the executive branch.

#### **§ 1218. Annual report**

The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i), and actions initiated by it before the Merit Systems Protection Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this section shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.

#### **§ 1219. Public information**

(a) The Special Counsel shall maintain and make available to the public—

(1) a list of noncriminal matters referred to heads of agencies under subsection (c) of section 1213, together with reports from heads of agencies under subsection (c)(1)(B) of such section relating to such matters;

(2) a list of matters referred to heads of agencies under section 1215(c)(2);

(3) a list of matters referred to heads of agencies under subsection (e) of section 1214, together with certifications from heads of agencies under such subsection; and

(4) reports from heads of agencies under section 1213(g)(1).

(b) The Special Counsel shall take steps to ensure that any list or report made available to the public under this section does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN  
CERTAIN REPRISAL CASES

**§ 1221. Individual right of action in certain reprisal cases**

(a) Subject to the provisions of subsection (b) of this section and subsection 1214(a)(3), an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice described in section 2302(b)(8), seek corrective action from the Merit Systems Protection Board.

(b) This section may not be construed to prohibit any employee, former employee, or applicant for employment from seeking corrective action from the Merit Systems Protection Board before seeking corrective action from the Special Counsel, if such employee, former employee, or applicant for employment has the right to appeal directly to the Board under any law, rule, or regulation.

(c)(1) Any employee, former employee, or applicant for employment seeking corrective action under subsection (a) may request that the Board order a stay of the personnel action involved.

(2) Any stay requested under paragraph (1) shall be granted within 10 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date the request is made, if the Board determines that such a stay would be appropriate.

(3)(A) The Board shall allow any agency which would be subject to a stay under this subsection to comment to the Board on such stay request.

(B) Except as provided in subparagraph (C), a stay granted under this subsection shall remain in effect for such period as the Board determines to be appropriate.

(C) The Board may modify or dissolve a stay under this subsection at any time, if the Board determines that such a modification or dissolution is appropriate.

(d)(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board shall issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence.

(2) A subpoena under this subsection may be issued, and shall be enforced, in the same manner as applies in the case of subpoenas under section 1204.

(e)(1) Subject to the provisions of paragraph (2), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant. The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as evidence that—

(A) the official taking the personnel action knew of the disclosure; and

(B) the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.

(2) Corrective action under paragraph (1) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(f)(1) A final order or decision shall be rendered by the Board as soon as practicable after the commencement of any proceeding under this section.

(2) A decision to terminate an investigation under subchapter II may not be considered in any action or other proceeding under this section.

(3)<sup>1</sup> If, based on evidence presented to it under this section, the Merit Systems Protection Board determines that there is reason to believe that a current employee may have committed a prohibited personnel practice, the Board shall refer the matter to the Special Counsel to investigate and take appropriate action under section 1215.

(g)(1)(A)<sup>2</sup> If the Board orders corrective action under this section, such corrective action may include—

(i) that the individual be placed, as nearly as possible, in the position the individual would have been in had the prohibited personnel practice not occurred; and

(ii) back pay and related benefits, medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential changes.

(B) Corrective action shall include attorney's fees and costs as provided for under paragraphs (2) and (3).

(2) If an employee, former employee, or applicant for employment is the prevailing party before the Merit Systems Protection Board, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred.

(3) If an employee, former employee, or applicant for employment is the prevailing party in an appeal from the Merit Systems Protection Board, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred, regardless of the basis of the decision.

(h)(1) An employee, former employee, or applicant for employment adversely affected or aggrieved by a final order or decision of the Board under this section may obtain judicial review of the order or decision.

(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

<sup>1</sup>So in original. The indentation of this paragraph should be set full measure.

<sup>2</sup>The amendment made by section 8(b) of Public Law 103-424 (adding a new paragraph (1)) was executed without indentation, in accordance with its probable intent.

(i) Subsections (a) through (h) shall apply in any proceeding brought under section 7513(d) if, or to the extent that, a prohibited personnel practice as defined in section 2302(b)(8) is alleged.

(j) In determining the appealability of any case involving an allegation made by an individual under the provisions of this chapter, neither the status of an individual under any retirement system established under a Federal statute nor any election made by such individual under any such system may be taken into account.

**§ 1222. Availability of other remedies**

Except as provided in section 1221(i), nothing in this chapter or chapter 23 shall be construed to limit any right or remedy available under a provision of statute which is outside of both this chapter and chapter 23.

**SECTION 3330 OF TITLE 5, UNITED STATES CODE  
(GOVERNMENT-WIDE LIST OF VACANT POSITIONS)**

**§ 3330. <sup>1</sup> Government-wide list of vacant positions**

(a) For the purpose of this section, the term “agency” means an Executive agency, excluding the General Accounting Office and any agency (or unit thereof) whose principal function is the conduct of foreign intelligence or counterintelligence activities, as determined by the President.

(b) The Office of Personnel Management shall establish and keep current a comprehensive list of all announcements of vacant positions in the competitive service within each agency that are to be filled by appointment for more than one year and for which applications are being (or will soon be) accepted from outside the agency’s work force.

(c) Included for any position listed shall be—

(1) a brief description of the position, including its title, tenure, location, and rate of pay;

(2) application procedures, including the period within which applications may be submitted and procedures for obtaining additional information; and

(3) any other information which the Office considers appropriate.

(d) The list shall be available to members of the public.

(e) The Office shall prescribe such regulations as may be necessary to carry out this section. Any requirement under this section that agencies notify the Office as to the availability of any vacant positions shall be designed so as to avoid any duplication of information otherwise required to be furnished under section 3327 of this title or any other provision of law.

(f) The Office may, to the extent it determines appropriate, charge such fees to agencies for services provided under this section and for related Federal employment information. The Office shall retain such fees to pay the costs of providing such services and information.

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<sup>1</sup>Section 3329 was transferred to section 3330 by section 1037(b)(1) of P.L. 104–106 (110 Stat. 432).

**SECTION 3502 OF TITLE 5, UNITED STATES CODE  
(ORDER OF RETENTION IN REDUCTIONS IN FORCE)**

**§ 3502. Order of retention**<sup>1</sup>

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

- (1) tenure of employment;
- (2) military preference, subject to section 3501(a)(3) of this title;
- (3) length of service; and
- (4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3) (A), (B), or (C) of this title; and

(C) is entitled to credit for—

(i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

<sup>1</sup>Section 4433 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 provides as follows:

**SEC. 4433. REDUCTION-IN-FORCE NOTIFICATION REQUIREMENTS.**

(a) (adds subsections (d) and (e) to section 3502 of title 5, United States Code)

(b) SPECIAL RULE.—(1) The provisions of section 3502(d) and (e) of title 5, United States Code (as added by subsection (a)) shall apply to employees of the Department of Defense according to their terms, except that, with respect to any reduction in force within that agency that would involve the separation of a significant number of employees (as determined under paragraph (1)(B) of such section 3502(d)), any reference in such section 3502(d) to “60 days” shall, in the case of the employees described in paragraph (2), be deemed to read “120 days”.

(2) The employees described in this paragraph are those employees of the Department of Defense who are to be separated, due to a reduction in force described in paragraph (1), effective on or after the last day of the 90-day period referred to in subsection (a)(2) and before February 1, 2000.

(3) Nothing in this subsection shall prevent the application of the amendment made by subsection (a) with respect to an employee if—

(A) the preceding paragraphs of this subsection do not apply with respect to such employee; and

(B) the amendment made by subsection (a) would otherwise apply with respect to such employee.

(4) The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.

(ii) service rendered as an employee described in section 2105(c) if such employee moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

(d)(1) Except as provided under subsection (e), an employee may not be released, due to a reduction in force, unless—

(A) such employee and such employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (2), at least 60 days before such employee is so released; and

(B) if the reduction in force would involve the separation of a significant number of employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

(2) Any notice under paragraph (1)(A) shall include—

(A) the personnel action to be taken with respect to the employee involved;

(B) the effective date of the action;

(C) a description of the procedures applicable in identifying employees for release;

(D) the employee's ranking relative to other competing employees, and how that ranking was determined; and

(E) a description of any appeal or other rights which may be available.

(3) Notice under paragraph (1)(B)—

(A) shall be given to—

(i) the State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998; and

(ii) the chief elected official of such unit or each of such units of local government as may be appropriate; and

(B) shall consist of written notification as to—

(i) the number of employees to be separated from service due to the reduction in force (broken down by geographic area or on such other basis as may be required under paragraph (4));

(ii) when those separations will occur; and

(iii) any other matter which might facilitate the delivery of rapid response assistance or other services under title I of the Workforce Investment Act of 1998.

(4) The Office shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to title I of the Workforce Investment Act of 1998.

(e)(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of advance notice required under subsection (d)(1)(A) and (B), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the reduction in force to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

(3) No notice period may be shortened to less than 30 days under this subsection.

(f)(1) The Secretary of Defense or the Secretary of a military department may—

(A) separate from service any employee who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary concerned) may not participate in a voluntary separation under paragraph (1)(A) if the Secretary concerned determines that such participation would impair the performance of the mission of the Department of Defense or the military department concerned.

(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

(5) No authority under paragraph (1) may be exercised after September 30, 2005.

**SECTION 5597 OF TITLE 5, UNITED STATES CODE  
(SEPARATION PAY)**

**§ 5597. Separation pay<sup>1</sup>**

(a) For the purpose of this section—

(1) the term “Secretary” means the Secretary of Defense;

(2) the term “defense agency” means an agency of the Department of Defense, as further defined under regulations prescribed by the Secretary; and

(3) the term “employee” means an employee of a defense agency, serving under an appointment without time limitation, who has been currently employed for a continuous period of at least 12 months, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83, chapter 84, or another retirement system for employees of the Government; or

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A).

(b) In order to avoid or minimize the need for involuntary separations due to a reduction in force, base closure, reorganization, transfer of function, workforce restructuring (to meet mission needs, achieve one or more strength reductions, correct skill imbalances, or reduce the number of high-grade, managerial, or supervisory positions), or other similar action affecting 1 or more defense agencies, the Secretary shall establish a program under which separation pay may be offered to encourage eligible employees to sepa-

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<sup>1</sup>Section 4436 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 provides as follows:

**SEC. 4436. SEPARATION PAY.**

(a) (adds a new section 5597 to title 5, United States Code)

(b) SOURCE OF PAYMENTS.—(1) For fiscal years after fiscal year 1993, separation pay shall be paid by an agency out of any funds or appropriations available for salaries and expenses of such agency.

(2) Of the amount authorized to be appropriated in section 301(5) for operation and maintenance for the Defense Agencies, \$70,000,000 shall be made available for payment of separation pay under section 5597 of title 5, United States Code, as added by subsection (a).

(c) REPORT.—At the end of each of fiscal years 1993 through 1998, the Secretary of Defense shall submit to the President, the Congress, and the Director of the Office of Personnel Management a report on the effectiveness and costs of carrying out the amendments made by this section.

(d) TIMELY PROCESSING OF RETIREMENT BENEFITS.—(1) In order to ensure the timely processing of applications for retirement benefits, under the Civil Service Retirement System or the Federal Employees' Retirement System, for civilian employees of the Department of Defense and other employees who retire when their agency is undergoing a major reorganization, a major reduction in force, or a major transfer of function, the costs incurred by the Office of Personnel Management in processing any such application shall be deemed to be an administrative expense described in section 8348(a)(1)(B) of title 5, United States Code.

(2) This subsection shall apply with respect to applications for retirement benefits based on separations occurring before January 1, 2000.

rate from service voluntarily (whether by retirement or resignation).

(c) Under the program, separation pay may be offered by a defense agency only—

(1) with the prior consent, or on the authority, of the Secretary; and

(2) to employees within such occupational groups or geographic locations, or subject to such other similar objective and nonpersonal limitations or conditions, as the Secretary may require.

A determination of which employees are within the scope of an offer of separation pay shall be made only on the basis of consistent and well-documented application of the relevant criteria.

(d) Such separation pay—

(1) shall be paid in a lump-sum or in installments;

(2) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section; or

(B) \$25,000;

(3) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(4) shall not be taken into account for purposes of determining the amount of any severance pay to which an individual may be entitled under section 5595 based on any other separation; and

(5) if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract, as described in subsection (g)(1).

(e) No amount shall be payable under this section based on any separation occurring after September 30, 2003.

(f) The Secretary shall prescribe such regulations as may be necessary to carry out this section.

(g)(1) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 and accepts employment with the Government of the United States, or who commences work for an agency of the United States through a personal services contract with the United States, within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the defense agency that paid the separation pay.

(2) If the employment is with an Executive agency, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(3) If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(4) If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(5) If the employment is without compensation, the appointing official may waive the repayment.

(h)(1)(A) In addition to any other payment that it is required to make under subchapter III of chapter 83 or chapter 84, the Department of Defense shall remit to the Office of Personnel Management an amount equal to 15 percent of the final basic pay of each covered employee.

(B) If the employee is one with respect to whom a remittance would otherwise be required under section 4(a) of the Federal Workforce Restructuring Act of 1994 based on the separation involved, the remittance under this subsection shall be instead of the remittance otherwise required under such section 4(a).

(2) Amounts remitted under paragraph (1) shall be deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

(3) For the purposes of this subsection—

(A) the term “covered employee” means an employee who is subject to subchapter III of chapter 83 or chapter 84 and to whom a voluntary separation incentive has been paid under this section on the basis of a separation occurring on or after October 1, 1997; and

(B) the term “final basic pay” has the meaning given such term in section 4(a)(2) of the Federal Workforce Restructuring Act of 1994.

(i)(1) Notwithstanding any other provision of this section, during fiscal year 2001, separation pay may be offered under the program carried out under this section with respect to workforce restructuring only to persons who, upon separation, are entitled to an immediate annuity under section 8336, 8412, or 8414 of this title and are otherwise eligible for the separation pay under this section.

(2) In the administration of the program under this section during fiscal year 2001, the Secretary shall ensure that not more than 1,000 employees are, as a result of workforce restructuring, separated from service in that fiscal year entitled to separation pay under this section.

(3) Separation pay may not be offered as a result of workforce restructuring under the program carried out under this section after fiscal year 2003.

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**SECTION 6304 OF TITLE 5, UNITED STATES CODE  
(ACCUMULATED ANNUAL AND SICK LEAVE)**

**§ 6304. Annual leave; accumulation**

(a) Except as provided by subsections (b), (d), (e), (f), and (g) of this section, annual leave provided by section 6303 of this title, which is not used by an employee, accumulates for use in succeeding years until it totals not more than 30 days at the beginning of the first full bi-weekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.

(b) Annual leave not used by an employee of the Government of the United States in one of the following classes of employees stationed outside the United States accumulates for use in succeeding years until it totals not more than 45 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year:

(1) Individuals directly recruited or transferred by the Government of the United States from the United States or its territories or possessions including the Commonwealth of Puerto Rico for employment outside the area of recruitment or from which transferred.

(2) Individuals employed locally but—

(A)(i) who were originally recruited from the United States or its territories or possessions including the Commonwealth of Puerto Rico but outside the area of employment;

(ii) who have been in substantially continuous employment by other agencies of the United States, United States firms, interests, or organizations, international organizations in which the United States participates, or foreign governments; and

(iii) whose conditions of employment provide for their return transportation to the United States or its territories or possessions including the Commonwealth of Puerto Rico; or

(B)(i) who were at the time of employment temporarily absent, for the purpose of travel or formal study, from the United States, or from their respective places of residence in its territories or possessions including the Commonwealth of Puerto Rico; and

(ii) who, during the temporary absence, have maintained residence in the United States or its territories or possessions including the Commonwealth of Puerto Rico but outside the area of employment.

(3) Individuals who are not normally residents of the area concerned and who are discharged from service in the armed

forces to accept employment with an agency of the Government of the United States.

(c) Annual leave in excess of the amount allowable—

(1) under subsection (a) or (b) of this section which was accumulated under earlier statute; or

(2) under subsection (a) of this section which was accumulated under subsection (b) of this section by an employee who becomes subject to subsection (a) of this section;

remains to the credit of the employee until used. The excess annual leave is reduced at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, by the amount of annual leave the employee used during the preceding year in excess of the amount which accrued during that year, until the employee's accumulated leave does not exceed the amount allowed under subsection (a) or (b) of this section, as appropriate.

(d)(1) Annual leave which is lost by operation of this section because of—

(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

(B) exigencies of the public business when the annual leave was scheduled in advance; or

(C) sickness of the employee when the annual leave was scheduled in advance;

shall be restored to the employee.

(2) Annual leave restored under paragraph (1) of this subsection, or under clause (2) of section 5562(a) of this title, which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management. Leave credited under this paragraph but unused and still available to the employee under the regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

(3)(A) For the purpose of this subsection, the closure of, and any realignment with respect to, an installation of the Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) during any period, the closure of an installation of the Department of Defense in the Republic of Panama in accordance with the Panama Canal Treaty of 1977, and the closure of any other installation of the Department of Defense, during the period beginning on October 1, 1992, and ending on December 31, 1997, shall be deemed to create an exigency of the public business and any leave that is lost by an employee of such installation by operation of this section (regardless of whether such leave was scheduled) shall be restored to the employee and shall be credited and available in accordance with paragraph (2).

(B) For the purpose of subparagraph (A), the term "realignment" means a base realignment (as defined in subsection (e)(3) of section 2687 of title 10) that meets the requirements of subsection (a)(2) of such section.

(4)(A) For the purpose of this subsection, service of a Department of Defense emergency essential employee in a combat zone is an exigency of the public business for that employee. Any leave that, by reason of such service, is lost by the employee by operation of this section (regardless of whether such leave was scheduled) shall be restored to the employee and shall be credited and available in accordance with paragraph (2).

(B) As used in subparagraph (A)—

(i) the term “Department of Defense emergency essential employee” means an employee of the Department of Defense who is designated under section 1580 of title 10 as an emergency essential employee; and

(ii) the term “combat zone” has the meaning given such term in section 112(c)(2) of the Internal Revenue Code of 1986.

(e) Annual leave otherwise accruable after June 30, 1960, which is lost by operation of this section because of administrative error and which is not credited under subsection (d)(2) of this section because the employee is separated before the error is discovered, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within 3 years immediately following the date of discovery of the error. Payment shall be made by the agency of employment when the lump-sum payment provisions of section 5551 of this title last became applicable to the employee at the rate of basic pay in effect on the date the lump-sum provisions became applicable.

(f)(1) This subsection applies with respect to annual leave accrued by an individual while serving in a position in—

(A) the Senior Executive Service;

(B) the Senior Foreign Service;

(C) the Defense Intelligence Senior Executive Service;

(D) the Senior Cryptologic Executive Service; or

(E) the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(2) For purposes of applying any limitation on accumulation under this section with respect to any annual leave described in paragraph (1)—

(A) “30 days” in subsection (a) shall be deemed to read “90 days”; and

(B) “45 days” in subsection (b) shall be deemed to read “90 days”.

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**SUBCHAPTER III OF CHAPTER 73 OF TITLE 5, UNITED STATES CODE (PROVISIONS RELATING TO THE HATCH ACT)**

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**SUBCHAPTER III—POLITICAL ACTIVITIES**

**§ 7321. Political participation**

It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

**§ 7322. Definitions**

For the purpose of this subchapter—

(1) “employee” means any individual, other than the President and the Vice President, employed or holding office in—

(A) an Executive agency other than the General Accounting Office;

(B) a position within the competitive service which is not in an Executive agency; or

(C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;

but does not include a member of the uniformed services;

(2) “partisan political office” means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization; and

(3) “political contribution”—

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(D) includes the provision of personal services for any political purpose.

**§ 7323. Political activity authorized; prohibitions**

(a) Subject to the provisions of subsection (b), an employee may take an active part in political management or in political campaigns, except an employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) knowingly solicit, accept, or receive a political contribution from any person, unless such person is—

(A) a member of the same Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multi-candidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));

(B) not a subordinate employee; and

(C) the solicitation is for a contribution to the multi-candidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))) of such Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of the enactment of the Hatch Act Reform Amendments of 1993 had a multi-candidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))); or

(3) run for the nomination or as a candidate for election to a partisan political office; or

(4) knowingly solicit or discourage the participation in any political activity of any person who—

(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

(B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee.

(b)(1) An employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

(2)(A) No employee described under subparagraph (B) (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(B) The provisions of subparagraph (A) shall apply to—

(i) an employee of—

(I) the Federal Election Commission;

(II) the Federal Bureau of Investigation;

(III) the Secret Service;

(IV) the Central Intelligence Agency;

(V) the National Security Council;

(VI) the National Security Agency;

- (VII) the Defense Intelligence Agency;
- (VIII) the Merit Systems Protection Board;
- (IX) the Office of Special Counsel;
- (X) the Office of Criminal Investigation of the Internal Revenue Service;
- (XI) the Office of Investigative Programs of the United States Customs Service;
- (XII) the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; or
- (XIII) the National Imagery and Mapping Agency; or
- (ii) a person employed in a position described under section 3132(a)(4), 5372, 5372a, or 5372b of title 5, United States Code.

(3) No employee of the Criminal Division of the Department of Justice (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(4) For purposes of this subsection, the term “active part in political management or in a political campaign” means those acts of political management or political campaigning which were prohibited for employees of the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(c) An employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

#### **§ 7324. Political activities on duty; prohibition**

(a) An employee may not engage in political activity—

- (1) while the employee is on duty;
- (2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;
- (3) while wearing a uniform or official insignia identifying the office or position of the employee; or
- (4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

(b)(1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(2) Paragraph (1) applies to an employee—

- (A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and
- (B) who is—
  - (i) an employee paid from an appropriation for the Executive Office of the President; or
  - (ii) an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in relations with

foreign powers or in the nationwide administration of Federal laws.

**§ 7325. Political activity permitted; employees residing in certain municipalities**

The Office of Personnel Management may prescribe regulations permitting employees, without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a) and paragraph (2) of section 7323(b) of this title, to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

**§ 7326. Penalties**

An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

**SECTION 8905a OF TITLE 5, UNITED STATES CODE  
(CONTINUED HEALTH INSURANCE COVERAGE)**

**§ 8905a. Continued coverage**

(a) Any individual described in paragraph (1) or (2) of subsection (b) may elect to continue coverage under this chapter in accordance with the provisions of this section.

(b) This section applies with respect to—

(1) any employee who—

(A) is separated from service, whether voluntarily or involuntarily, except that if the separation is involuntary, this section shall not apply if the separation is for gross misconduct (as defined under regulations which the Office of Personnel Management shall prescribe); and

(B) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract); and

(2) any individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child under this chapter;

(B) on the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered under a health benefits plan under this chapter as a member of the family of an employee or annuitant; and

(C) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract).

(c)(1) The Office shall prescribe regulations and provide for the inclusion of appropriate terms in contracts with carriers to provide that—

(A) with respect to an employee who becomes (or will become) eligible for continued coverage under this section as a result of separation from service, the separating agency shall, before the end of the 30-day period beginning on the date as of which coverage (including any temporary extensions of coverage) would otherwise end, notify the individual of such individual's rights under this section; and

(B) with respect to a child of an employee or annuitant who becomes eligible for continued coverage under this section as a result of ceasing to meet the requirements for being considered a member of the employee's or annuitant's family—

(i) the employee or annuitant may provide written notice of the child's change in status (complete with the child's name, address, and such other information as the Office may by regulation require)—

(I) to the employee's employing agency; or

- (II) in the case of an annuitant, to the Office; and
- (ii) if the notice referred to in clause (i) is received within 60 days after the date as of which the child involved first ceases to meet the requirements involved, the employing agency or the Office (as the case may be) must, within 14 days after receiving such notice, notify the child of such child's rights under this section.
- (2) In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Office by regulation prescribes) must be made—
- (A) in the case of an individual seeking continued coverage based on a separation from service, before the end of the 60-day period beginning on the later of—
- (i) the effective date of the separation; or
- (ii) the date the separated individual receives the notice required under paragraph (1)(A); or
- (B) in the case of an individual seeking continued coverage based on a change in circumstances making such individual ineligible for coverage as an unmarried dependent child, before the end of the 60-day period beginning on the later of—
- (i) the date as of which such individual first ceases to meet the requirements for being considered an unmarried dependent child; or
- (ii) the date such individual receives notice under paragraph (1)(B)(ii);
- except that if a parent fails to provide the notice required under paragraph (1)(B)(i) in timely fashion, the 60-day period under this subparagraph shall be based on the date under clause (i), irrespective of whether or not any notice under paragraph (1)(B)(ii) is provided.
- (d)(1)(A) Except as provided in paragraphs (4) and (5), an individual receiving continued coverage under this section shall be required to pay currently into the Employees Health Benefits Fund, under arrangements satisfactory to the Office, an amount equal to the sum of—
- (i) the employee and agency contributions which would be required in the case of an employee enrolled in the same health benefits plan and level of benefits; and
- (ii) an amount, determined under regulations prescribed by the Office, necessary for administrative expenses, but not to exceed 2 percent of the total amount under clause (i).
- (B) Payments under this section to the Fund shall—
- (i) in the case of an individual whose continued coverage is based on such individual's separation, be made through the agency which last employed such individual; or
- (ii) in the case of an individual whose continued coverage is based on a change in circumstances referred to in subsection (c)(2)(B), be made through—
- (I) the Office, if, at the time coverage would (but for this section) otherwise have been discontinued, the individual was covered as the child of an annuitant; or
- (II) if, at the time referred to in subclause (I), the individual was covered as the child of an employee, the employee's employing agency as of such time.

(2) If an individual elects to continue coverage under this section before the end of the applicable period under subsection (c)(2), but after such individual's coverage under this chapter (including any temporary extensions of coverage) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1), (4), or (5) as the case may be) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

(3)(A) An individual making an election under subsection (c)(2)(B) may, at such individual's option, elect coverage either as an individual or, if appropriate, for self and family.

(B) For the purpose of this paragraph, members of an individual's family shall be determined in the same way as would apply under this chapter in the case of an enrolled employee.

(C) Nothing in this paragraph shall be considered to limit an individual making an election under subsection (c)(2)(A) to coverage for self alone.

(4)(A) If the basis for continued coverage under this section is an involuntary separation from a position, or a voluntary separation from a surplus position, in or under the Department of Defense due to a reduction in force, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall apply with respect to any individual whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before—

(i) October 1, 2006; or

(ii) February 1, 2007, if specific notice of such separation was given to such individual before October 1, 2006.

(C) For the purpose of this paragraph, "surplus position" means a position which is identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures.

(5)(A) If the basis for continued coverage under this section is an involuntary separation from a position in or under the Department of Veterans Affairs due to a reduction in force or a title 38 staffing readjustment, or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of the enactment of this paragraph.

(e)(1) Continued coverage under this section may not extend beyond—

(A) in the case of an individual whose continued coverage is based on separation from service, the date which is 18 months after the effective date of the separation; or

(B) in the case of an individual whose continued coverage is based on ceasing to meet the requirements for being considered an unmarried dependent child, the date which is 36 months after the date on which the individual first ceases to meet those requirements, subject to paragraph (2).

(2) In the case of an individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child;

(B) as of the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered as the child of a former employee receiving continued coverage under this section based on the former employee's separation from service; and

(C) so ceases to meet the requirements referred to in subparagraph (A) before the end of the 18-month period beginning on the date of the former employee's separation from service, extended coverage under this section may not extend beyond the date which is 36 months after the separation date referred to in subparagraph (C).

(f)(1) The Office shall prescribe regulations under which, in addition to any individual otherwise eligible for continued coverage under this section, and to the extent practicable, continued coverage may also, upon appropriate written application, be afforded under this section—

(A) to any individual who—

(i) if subparagraphs (A) and (C) of paragraph (10) of section 8901 were disregarded, would be eligible to be considered a former spouse within the meaning of such paragraph; but

(ii) would not, but for this subsection, be eligible to be so considered; and

(B) to any individual whose coverage as a family member would otherwise terminate as a result of a legal separation.

(2) The terms and conditions for coverage under the regulations shall include—

(A) consistent with subsection (c), any necessary notification provisions, and provisions under which an election period of at least 60 days' duration is afforded;

(B) terms and conditions identical to those under subsection (d), except that contributions to the Employees Health Benefits Fund shall be made through such agency as the Office by regulation prescribes;

(C) provisions relating to the termination of continued coverage, except that continued coverage under this section may not (subject to paragraph (3)) extend beyond the date which is 36 months after the date on which the qualifying event under this subsection (the date of divorce, annulment, or legal separation, as the case may be) occurs; and

(D) provisions designed to ensure that any coverage pursuant to this subsection does not adversely affect any eligibility for coverage which the individual involved might otherwise have under this chapter (including as a result of any change in personal circumstances) if this subsection had not been enacted.

(3) In the case of an individual—

(A) who becomes eligible for continued coverage under this subsection based on a divorce, annulment, or legal separation from a person who, as of the day before the date of the divorce, annulment, or legal separation (as the case may be) was receiving continued coverage under this section for self and family based on such person's separation from service; and

(B) whose divorce, annulment, or legal separation (as the case may be) occurs before the end of the 18-month period beginning on the date of the separation from service referred to in subparagraph (A),

extended coverage under this section may not extend beyond the date which is 36 months after the date of the separation from service, as referred to in subparagraph (A).

**SECTIONS 4 AND 5 OF THE FEDERAL WORKFORCE  
RESTRUCTURING ACT OF 1994**

**SEC. 4. [5 U.S.C. 8331 note] ADDITIONAL AGENCY CONTRIBUTIONS TO  
THE RETIREMENT FUND.**

(a) RELATING TO VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, an agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 9 percent of the final basic pay of each employee of the agency—

(A) who, on or after the date of the enactment of this Act retires under section 8336(d)(2) of such title; and

(B) to whom a voluntary separation incentive payment has been or is to be paid by such agency based on that retirement.

(2) DEFINITIONS.—For the purpose of this subsection—

(A) the term “final basic pay”, with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor; and

(B) the term “voluntary separation incentive payment” means—

(i) a voluntary separation incentive payment under section 3 (including under any program established under section 3(f)); and

(ii) any separation pay under section 5597 of title 5, United States Code, or section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103–36; 107 Stat. 104).

(b) RELATING TO FISCAL YEARS 1995 THROUGH 1998.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, in fiscal years 1995, 1996, 1997, and 1998 (and in addition to any amounts required under subsection (a)), each agency shall, before the end of each such fiscal year, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to the product of—

(A) the number of employees of such agency who, as of March 31st of such fiscal year, are subject to subchapter III of chapter 83 or chapter 84 of such title; multiplied by

(B) \$80.

(2) DEFINITION.—For the purpose of this subsection, the term “agency” means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office.

(c) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary to carry out this section.

**SEC. 5. [5 U.S.C. 3101 note] REDUCTION OF FEDERAL FULL-TIME EQUIVALENT POSITIONS.**

(a) DEFINITION.—For the purpose of this section, the term “agency” means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office.

(b) LIMITATIONS ON FULL-TIME EQUIVALENT POSITIONS.—The President, through the Office of Management and Budget (in consultation with the Office of Personnel Management), shall ensure that the total number of full-time equivalent positions in all agencies shall not exceed—

- (1) 2,084,600 during fiscal year 1994;
- (2) 2,043,300 during fiscal year 1995;
- (3) 2,003,300 during fiscal year 1996;
- (4) 1,963,300 during fiscal year 1997;
- (5) 1,922,300 during fiscal year 1998; and
- (6) 1,882,300 during fiscal year 1999.

(c) MONITORING AND NOTIFICATION.—The Office of Management and Budget, after consultation with the Office of Personnel Management, shall—

(1) continuously monitor all agencies and make a determination on the first date of each quarter of each applicable fiscal year of whether the requirements under subsection (b) are met; and

(2) notify the President and the Congress on the first date of each quarter of each applicable fiscal year of any determination that any requirement of subsection (b) is not met.

(d) COMPLIANCE.—If, at any time during a fiscal year, the Office of Management and Budget notifies the President and the Congress that any requirement under subsection (b) is not met, no agency may hire any employee for any position in such agency until the Office of Management and Budget notifies the President and the Congress that the total number of full-time equivalent positions for all agencies equals or is less than the applicable number required under subsection (b).

(e) WAIVER.—

(1) EMERGENCIES.—Any provision of this section may be waived upon a determination by the President that—

(A) the existence of a state of war or other national security concern so requires; or

(B) the existence of an extraordinary emergency threatening life, health, safety, property, or the environment so requires.

(2) AGENCY EFFICIENCY OR CRITICAL MISSION.—

(A) Subsection (d) may be waived, in the case of a particular position or category of positions in an agency, upon

a determination of the President that the efficiency of the agency or the performance of a critical agency mission so requires.

(B) Whenever the President grants a waiver pursuant to subparagraph (A), the President shall take all necessary actions to ensure that the overall limitations set forth in subsection (b) are not exceeded.

(f) EMPLOYMENT BACKFILL PREVENTION.—

(1) IN GENERAL.—The total number of funded employee positions in all agencies (excluding the Department of Defense and the Central Intelligence Agency) shall be reduced by one position for each vacancy created by the separation of any employee who has received, or is due to receive, a voluntary separation incentive payment under section 3 (a)–(e). For purposes of this subsection, positions and vacancies shall be counted on a full-time-equivalent basis.

(2) RELATED RESTRICTION.—No funds budgeted for and appropriated by any Act for salaries or expenses of positions eliminated under this subsection may be used for any purpose other than authorized separation costs.

(g) LIMITATION ON PROCUREMENT OF SERVICE CONTRACTS.—

The President shall take appropriate action to ensure that there is no increase in the procurement of service contracts by reason of the enactment of this Act, except in cases in which a cost comparison demonstrates such contracts would be to the financial advantage of the Federal Government.

**SECTION 316 OF TITLE 37, UNITED STATES CODE**

**§ 316. Special pay: foreign language proficiency pay**

(a) Any member of the uniformed services—

(1) who is entitled to basic pay under section 204 of this title;

(2) who has been certified by the Secretary concerned within the past 12 months to be proficient in a foreign language identified by the Secretary concerned as being a language in which it is necessary to have personnel proficient because of national defense or public health considerations; and

(3) who—

(A) is qualified in a uniformed services specialty requiring such proficiency;

(B) received training, under regulations prescribed by the Secretary concerned, designed to develop such proficiency;

(C) is assigned to duties requiring such a proficiency;

or

(D) is proficient in a foreign language for which the uniformed service may have a critical need (as determined by the Secretary concerned),

may be paid special pay under this section in addition to any other pay or allowance to which the member is entitled.

(b) The monthly rate for special pay under subsection (a) shall be determined by the Secretary concerned and may not exceed \$300.

(c)(1) Under regulations prescribed by the Secretary concerned, when a member of a reserve component who is entitled to compensation under section 206 of this title meets the requirements for special pay authorized in subsection (a), except the requirement prescribed in subsection (a)(1), the member may be paid an increase in compensation equal to one-thirtieth of the monthly special pay authorized under subsection (b) for a member who is entitled to basic pay under section 204 of this title.

(2) A member eligible for increased compensation under paragraph (1) shall be paid such increase—

(A) for each regular period of instruction, or period of appropriate duty, in which he is engaged for at least two hours, including instruction received or duty performed on a Sunday or holiday; and

(B) for each period of performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary concerned may prescribe.

(3) This subsection does not apply to a member who is entitled to basic pay under section 204 of this title.

(d) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the

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jurisdiction of the Secretary, by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy, by the Secretary of Health and Human Services for the Commissioned Corps of the Public Health Service, and by the Secretary of Commerce for the National Oceanic and Atmospheric Administration.

**SECTIONS 602, 603, 613, 618-620, 624-626, 628-630, AND 632  
OF THE TREASURY, POSTAL SERVICE AND GENERAL  
GOVERNMENT APPROPRIATIONS ACT, 1995**

\* \* \* \* \*

**TITLE VI—GOVERNMENTWIDE GENERAL PROVISIONS**

**DEPARTMENTS, AGENCIES, AND CORPORATIONS**

\* \* \* \* \*

SEC. 602. No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for fiscal year 1995 shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such department, agency, or instrumentality.

SEC. 603. Notwithstanding 31 U.S.C. 1345, any agency, department or instrumentality of the United States which provides or proposes to provide child care services for Federal employees may reimburse any Federal employee or any person employed to provide such services for travel, transportation, and subsistence expenses incurred for training classes, conferences or other meetings in connection with the provision of such services: *Provided*, That any per diem allowance made pursuant to this section shall not exceed the rate specified in regulations prescribed pursuant to section 5707 of title 5, United States Code.

\* \* \* \* \*

SEC. 613. No part of any appropriation contained in this or any other Act shall be available for interagency financing of boards, commissions, councils, committees, or similar groups (whether or not they are interagency entities) which do not have a prior and specific statutory approval to receive financial support from more than one agency or instrumentality.

\* \* \* \* \*

SEC. 618. During the period in which the head of any department or agency, or any other officer or civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is expressly approved by the Committees on Appropriations of the House and Senate. For the purposes of this

section the word "office" shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual.

\* \* \* \* \*

SEC. 619. [5 U.S.C. 3341 nt] (a) Notwithstanding the provisions of sections 112 and 113 of title 3, United States Code, each Executive agency detailing any personnel shall submit a report on an annual basis in each fiscal year to the Senate and House Committees on Appropriations on all employees or members of the armed services detailed to Executive agencies, listing the grade, position, and offices of each person detailed and the agency to which each such person is detailed.

(b) The provisions of this section shall not apply to Federal employees or members of the armed services detailed to or from—

- (1) the Central Intelligence Agency;
- (2) the National Security Agency;
- (3) the Defense Intelligence Agency;
- (4) the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (5) the Bureau of Intelligence and Research of the Department of State;
- (6) any agency, office, or unit of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation and the Drug Enforcement Administration of the Department of Justice, the Department of the Treasury, the Department of Transportation, and the Department of Energy performing intelligence functions; and
- (7) the Director of Central Intelligence.

(c) The exemptions in part (b) of this section are not intended to apply to information on the use of personnel detailed to or from the intelligence agencies which is currently being supplied to the Senate and House Intelligence and Appropriations Committees by the executive branch through budget justification materials and other reports.

(d) For the purposes of this section, the term "Executive agency" has the same meaning as defined under section 105 of title 5, United States Code (except that the provisions of section 104(2) of title 5, United States Code, shall not apply), and includes the White House Office, the Executive Residence, and any office, council, or organizational unit of the Executive Office of the President.

SEC. 620. No funds appropriated in this or any other Act for fiscal year 1995 may be used to implement or enforce the agreements in Standard Forms 312 and 4355 of the Government or any other nondisclosure policy, form or agreement if such policy, form or agreement does not contain the following provisions:

"These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by

members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.”

\* \* \* \* \*

SEC. 624. Notwithstanding section 1346 of title 31, United States Code, funds made available for fiscal year 1995 by this or any other Act shall be available for the interagency funding of national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities, as provided by Executive Order Numbered 12472 (April 3, 1984).

SEC. 625. Notwithstanding any provisions of this or any other Act, during the fiscal year ending September 30, 1995, any department, division, bureau, or office may use funds appropriated by this or any other Act to install telephone lines, and necessary equipment, and to pay monthly charges, in any private residence or private apartment of an employee who has been authorized to work at home in accordance with guidelines issued by the Office of Personnel Management: *Provided*, That the head of the department, division, bureau, or office certifies that adequate safeguards against private misuse exist, and that the service is necessary for direct support of the agency's mission.

SEC. 626. (a) None of the funds appropriated by this or any other Act may be obligated or expended by any Federal department, agency, or other instrumentality for the salaries or expenses of any employee appointed to a position of a confidential or policy-determining character excepted from the competitive service pursuant to section 3302 of title 5, United States Code, without a certification to the Office of Personnel Management from the head of the Federal department, agency, or other instrumentality employing the Schedule C appointee that the Schedule C position was not created solely or primarily in order to detail the employee to the White House.

(b) The provisions of this section shall not apply to Federal employees or members of the armed services detailed to or from—

- (1) the Central Intelligence Agency;
- (2) the National Security Agency;
- (3) the Defense Intelligence Agency;
- (4) the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (5) the Bureau of Intelligence and Research of the Department of State;

(6) any agency, office, or unit of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation and the Drug Enforcement Administration of the Department of Justice, the Department of Transportation, the Department of the Treasury, and the Department of Energy performing intelligence functions; and

(7) the Director of Central Intelligence.

\* \* \* \* \*

SEC. 628. No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for fiscal year 1995 shall obligate or expend any such funds, unless such department, agency or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from discrimination and sexual harassment and that all of its workplaces are not in violation of title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973.

SEC. 629. (a)(1) Subchapter II of chapter 63 of title 5, United States Code, is amended by adding at the end the following:

**“§ 6327. Absence in connection with serving as a bone-marrow or organ donor**

“(a) An employee in or under an Executive agency is entitled to leave without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance or efficiency rating, for the time necessary to permit such employee to serve as a bone-marrow or organ donor.

“(b) Not to exceed 7 days of leave may be used under this section by an employee in a calendar year.

“(c) The Office of Personnel Management may prescribe regulations for the administration of this section.”.

(2)(A) Section 6129 of title 5, United States Code, is amended by inserting “6327,” after “6326,”.

(B) The table of sections for chapter 63 of title 5, United States Code, is amended by adding after the item relating to section 6326 the following:

“6327. Absence in connection with serving as a bone-marrow or organ donor.”.

(b)(1) Section 6307 of title 5, United States Code, is amended—

(A) by redesignating subsection (c) as subsection (d);

(B) by inserting after subsection (b) the following:

“(c) Sick leave provided by this section may be used for purposes relating to the adoption of a child.”; and

(C) in subsection (d) (as so redesignated by subparagraph

(A)) by inserting “or for purposes relating to the adoption of a child,” after “ailment,”.

(2) Section 6129 of title 5, United States Code, is amended by striking “6307 (a) and (c),” and inserting “6307 (a) and (d),”.

(3)(A) The Office of Personnel Management shall prescribe regulations under which any employee who used or uses annual leave for an adoption-related purpose, after September 30, 1991, and before the date as of which sick leave first becomes available for such purpose as a result of the enactment of this subsection may, upon

appropriate written application, elect to have such employee's leave accounts adjusted to reflect the amount of annual leave and sick leave, respectively, which would remain had sick leave been used instead of all or any portion of the annual leave actually used, as designated by the employee.

(B) An application under this paragraph may not be approved unless it is submitted—

(i) within 1 year after the date of the enactment of this Act or such later date as the Office may prescribe;

(ii) in such form and manner as the Office shall require; and

(iii) by an individual who is an employee as of the time of application.

(C) For the purpose of this paragraph, the term "employee" has the meaning given such term by section 6301(2) of title 5, United States Code.

SEC. 630. (a)(1) [5 U.S.C. 5303 nt] The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 1995 under section 5303 of title 5, United States Code, shall be an increase of 2 percent.

(2) For purposes of each provision of law amended by section 704(a)(2) of the Ethics Reform Act of 1989 (5 U.S.C. 5318 note), no adjustment under section 5303 of title 5, United States Code, shall be considered to have taken effect in fiscal year 1995 in the rates of basic pay for the statutory pay systems.

(3) For purposes of this subsection, the term "statutory pay system" shall have the meaning given such term by section 5302(1) of title 5, United States Code.

(b) [5 U.S.C. 5304 nt] For purposes of any locality-based comparability payments taking effect in fiscal year 1995 under subchapter I of chapter 53 of title 5, United States Code (whether by adjustment or otherwise), section 5304(a) of such title shall be deemed to be without force or effect.

(c) [5 U.S.C. 5304 nt] Notwithstanding section 5304(a)(3)(B) of title 5, United States Code, the annualized cost of pay adjustments made under section 5304 of such title in calendar year 1995 shall be equal to 0.6 percent of the estimated aggregate fiscal year 1995 executive branch civilian payroll—

(1) as determined by the pay agent (within the meaning of section 5302 of such title); and

(2) determined as if the rates of pay and comparability payments payable on September 30, 1994, had remained in effect.

\* \* \* \* \*

SEC. 632. [3 U.S.C. 101 nt] (a) IN GENERAL.—Hereafter, the employment of any individual within the Executive Office of the President shall be placed on leave without pay status if the individual—

(1) has not, within 30 days of commencing such employment or by October 31, 1994 (whichever occurs later), submitted a completed questionnaire for sensitive positions (SF-86) or equivalent form; or

(2) has not, within 6 months of commencing such employment or by October 31, 1994 (whichever occurs later), had his or her background investigation, if completed, forwarded by the counsel to the President to the United States Secret Service for issuance of the appropriate access pass.

(b) EXEMPTION.—Subsection (a) shall not apply to any individual specifically exempted from such subsection by the President or his designee.

\* \* \* \* \*

## **K. MISCELLANEOUS RELEVANT LAWS**

### **COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT**

(Public Law 103–414; 108 Stat. 4279; approved October 25, 1994)

AN ACT To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## **TITLE I—INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS**

### **SEC. 101. [47 U.S.C. 1001 note] SHORT TITLE.**

This title may be cited as the “Communications Assistance for Law Enforcement Act”.

### **SEC. 102. [47 U.S.C. 1001] DEFINITIONS.**

For purposes of this title—

(1) The terms defined in section 2510 of title 18, United States Code, have, respectively, the meanings stated in that section.

(2) The term “call-identifying information” means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier.

(3) The term “Commission” means the Federal Communications Commission.

(4) The term “electronic messaging services” means software-based services that enable the sharing of data, images, sound, writing, or other information among computing devices controlled by the senders or recipients of the messages.

(5) The term “government” means the government of the United States and any agency or instrumentality thereof, the District of Columbia, any commonwealth, territory, or possession of the United States, and any State or political subdivision thereof authorized by law to conduct electronic surveillance.

(6) The term “information services”—

(A) means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and

(B) includes—

(i) a service that permits a customer to retrieve stored information from, or file information for storage in, information storage facilities;

(ii) electronic publishing; and

(iii) electronic messaging services; but

(C) does not include any capability for a telecommunications carrier's internal management, control, or operation of its telecommunications network.

(7) The term "telecommunications support services" means a product, software, or service used by a telecommunications carrier for the internal signaling or switching functions of its telecommunications network.

(8) The term "telecommunications carrier"—

(A) means a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire; and

(B) includes—

(i) a person or entity engaged in providing commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))); or

(ii) a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of this title; but

(C) does not include—

(i) persons or entities insofar as they are engaged in providing information services; and

(ii) any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General.

**SEC. 103. [47 U.S.C. 1002] ASSISTANCE CAPABILITY REQUIREMENTS.**

(a) CAPABILITY REQUIREMENTS.—Except as provided in subsections (b), (c), and (d) of this section and sections 108(a) and 109(b) and (d), a telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of—

(1) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's equipment, facility, or service, or at such later time as may be acceptable to the government;

(2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to ac-

cess call-identifying information that is reasonably available to the carrier—

(A) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

(B) in a manner that allows it to be associated with the communication to which it pertains,

except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of title 18, United States Code), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

(3) delivering intercepted communications and call-identifying information to the government, pursuant to a court order or other lawful authorization, in a format such that they may be transmitted by means of equipment, facilities, or services procured by the government to a location other than the premises of the carrier; and

(4) facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects—

(A) the privacy and security of communications and call-identifying information not authorized to be intercepted; and

(B) information regarding the government's interception of communications and access to call-identifying information.

(b) LIMITATIONS.—

(1) DESIGN OF FEATURES AND SYSTEMS CONFIGURATIONS.— This title does not authorize any law enforcement agency or officer—

(A) to require any specific design of equipment, facilities, services, features, or system configurations to be adopted by any provider of a wire or electronic communication service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services; or

(B) to prohibit the adoption of any equipment, facility, service, or feature by any provider of a wire or electronic communication service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services.

(2) INFORMATION SERVICES; PRIVATE NETWORKS AND INTERCONNECTION SERVICES AND FACILITIES.—The requirements of subsection (a) do not apply to—

(A) information services; or

(B) equipment, facilities, or services that support the transport or switching of communications for private networks or for the sole purpose of interconnecting telecommunications carriers.

(3) ENCRYPTION.—A telecommunications carrier shall not be responsible for decrypting, or ensuring the government's

ability to decrypt, any communication encrypted by a subscriber or customer, unless the encryption was provided by the carrier and the carrier possesses the information necessary to decrypt the communication.

(c) EMERGENCY OR EXIGENT CIRCUMSTANCES.—In emergency or exigent circumstances (including those described in sections 2518 (7) or (11)(b) and 3125 of title 18, United States Code, and section 1805(e) of title 50 of such Code), a carrier at its discretion may comply with subsection (a)(3) by allowing monitoring at its premises if that is the only means of accomplishing the interception or access.

(d) MOBILE SERVICE ASSISTANCE REQUIREMENTS.—A telecommunications carrier that is a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934) offering a feature or service that allows subscribers to redirect, hand off, or assign their wire or electronic communications to another service area or another service provider or to utilize facilities in another service area or of another service provider shall ensure that, when the carrier that had been providing assistance for the interception of wire or electronic communications or access to call-identifying information pursuant to a court order or lawful authorization no longer has access to the content of such communications or call-identifying information within the service area in which interception has been occurring as a result of the subscriber's use of such a feature or service, information is made available to the government (before, during, or immediately after the transfer of such communications) identifying the provider of a wire or electronic communication service that has acquired access to the communications.

**SEC. 104. [47 U.S.C. 1003] NOTICES OF CAPACITY REQUIREMENTS.**

(a) NOTICES OF MAXIMUM AND ACTUAL CAPACITY REQUIREMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this title, after consulting with State and local law enforcement agencies, telecommunications carriers, providers of telecommunications support services, and manufacturers of telecommunications equipment, and after notice and comment, the Attorney General shall publish in the Federal Register and provide to appropriate telecommunications industry associations and standard-setting organizations—

(A) notice of the actual number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity set forth under subparagraph (B), that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously by the date that is 4 years after the date of enactment of this title; and

(B) notice of the maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simulta-

neously after the date that is 4 years after the date of enactment of this title.

(2) BASIS OF NOTICES.—The notices issued under paragraph (1)—

(A) may be based upon the type of equipment, type of service, number of subscribers, type or size or carrier, nature of service area, or any other measure; and

(B) shall identify, to the maximum extent practicable, the capacity required at specific geographic locations.

(b) COMPLIANCE WITH CAPACITY NOTICES.—

(1) INITIAL CAPACITY.—Within 3 years after the publication by the Attorney General of a notice of capacity requirements or within 4 years after the date of enactment of this title, whichever is longer, a telecommunications carrier shall, subject to subsection (e), ensure that its systems are capable of—

(A) accommodating simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under subsection (a)(1)(A); and

(B) expanding to the maximum capacity set forth in the notice under subsection (a)(1)(B).

(2) EXPANSION TO MAXIMUM CAPACITY.—After the date described in paragraph (1), a telecommunications carrier shall, subject to subsection (e), ensure that it can accommodate expeditiously any increase in the actual number of communication interceptions, pen registers, and trap and trace devices that authorized agencies may seek to conduct and use, up to the maximum capacity requirement set forth in the notice under subsection (a)(1)(B).

(c) NOTICES OF INCREASED MAXIMUM CAPACITY REQUIREMENTS.—

(1) NOTICE.—The Attorney General shall periodically publish in the Federal Register, after notice and comment, notice of any necessary increases in the maximum capacity requirement set forth in the notice under subsection (a)(1)(B).

(2) COMPLIANCE.—Within 3 years after notice of increased maximum capacity requirements is published under paragraph (1), or within such longer time period as the Attorney General may specify, a telecommunications carrier shall, subject to subsection (e), ensure that its systems are capable of expanding to the increased maximum capacity set forth in the notice.

(d) CARRIER STATEMENT.—Within 180 days after the publication by the Attorney General of a notice of capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under such subsection.

(e) REIMBURSEMENT REQUIRED FOR COMPLIANCE.—The Attorney General shall review the statements submitted under subsection (d) and may, subject to the availability of appropriations, agree to reimburse a telecommunications carrier for costs directly associated with modifications to attain such capacity requirement that are determined to be reasonable in accordance with section 109(e). Until the Attorney General agrees to reimburse such carrier

for such modification, such carrier shall be considered to be in compliance with the capacity notices under subsection (a) or (c).

**SEC. 105. [47 U.S.C. 1004] SYSTEMS SECURITY AND INTEGRITY.**

A telecommunications carrier shall ensure that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission.

**SEC. 106. [47 U.S.C. 1005] COOPERATION OF EQUIPMENT MANUFACTURERS AND PROVIDERS OF TELECOMMUNICATIONS SUPPORT SERVICES.**

(a) CONSULTATION.—A telecommunications carrier shall consult, as necessary, in a timely fashion with manufacturers of its telecommunications transmission and switching equipment and its providers of telecommunications support services for the purpose of ensuring that current and planned equipment, facilities, and services comply with the capability requirements of section 103 and the capacity requirements identified by the Attorney General under section 104.

(b) COOPERATION.—Subject to sections 104(e), 108(a), and 109 (b) and (d), a manufacturer of telecommunications transmission or switching equipment and a provider of telecommunications support services shall, on a reasonably timely basis and at a reasonable charge, make available to the telecommunications carriers using its equipment, facilities, or services such features or modifications as are necessary to permit such carriers to comply with the capability requirements of section 103 and the capacity requirements identified by the Attorney General under section 104.

**SEC. 107. [47 U.S.C. 1006] TECHNICAL REQUIREMENTS AND STANDARDS; EXTENSION OF COMPLIANCE DATE.**

(a) SAFE HARBOR.—

(1) CONSULTATION.—To ensure the efficient and industry-wide implementation of the assistance capability requirements under section 103, the Attorney General, in coordination with other Federal, State, and local law enforcement agencies, shall consult with appropriate associations and standard-setting organizations of the telecommunications industry, with representatives of users of telecommunications equipment, facilities, and services, and with State utility commissions.

(2) COMPLIANCE UNDER ACCEPTED STANDARDS.—A telecommunications carrier shall be found to be in compliance with the assistance capability requirements under section 103, and a manufacturer of telecommunications transmission or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 106, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission under subsection (b), to meet the requirements of section 103.

(3) **ABSENCE OF STANDARDS.**—The absence of technical requirements or standards for implementing the assistance capability requirements of section 103 shall not—

(A) preclude a telecommunications carrier, manufacturer, or telecommunications support services provider from deploying a technology or service; or

(B) relieve a carrier, manufacturer, or telecommunications support services provider of the obligations imposed by section 103 or 106, as applicable.

(b) **COMMISSION AUTHORITY.**—If industry associations or standard-setting organizations fail to issue technical requirements or standards or if a Government agency or any other person believes that such requirements or standards are deficient, the agency or person may petition the Commission to establish, by rule, technical requirements or standards that—

(1) meet the assistance capability requirements of section 103 by cost-effective methods;

(2) protect the privacy and security of communications not authorized to be intercepted;

(3) minimize the cost of such compliance on residential ratepayers;

(4) serve the policy of the United States to encourage the provision of new technologies and services to the public; and

(5) provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 103 during any transition period.

(c) **EXTENSION OF COMPLIANCE DATE FOR EQUIPMENT, FACILITIES, AND SERVICES.**—

(1) **PETITION.**—A telecommunications carrier proposing to install or deploy, or having installed or deployed, any equipment, facility, or service prior to the effective date of section 103 may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section 103.

(2) **GROUND FOR EXTENSION.**—The Commission may, after consultation with the Attorney General, grant an extension under this subsection, if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period.

(3) **LENGTH OF EXTENSION.**—An extension under this subsection shall extend for no longer than the earlier of—

(A) the date determined by the Commission as necessary for the carrier to comply with the assistance capability requirements under section 103; or

(B) the date that is 2 years after the date on which the extension is granted.

(4) **APPLICABILITY OF EXTENSION.**—An extension under this subsection shall apply to only that part of the carrier's business on which the new equipment, facility, or service is used.

**SEC. 108. [47 U.S.C. 1007] ENFORCEMENT ORDERS.**

(a) **GROUND FOR ISSUANCE.**—A court shall issue an order enforcing this title under section 2522 of title 18, United States Code, only if the court finds that—

(1) alternative technologies or capabilities or the facilities of another carrier are not reasonably available to law enforcement for implementing the interception of communications or access to call-identifying information; and

(2) compliance with the requirements of this title is reasonably achievable through the application of available technology to the equipment, facility, or service at issue or would have been reasonably achievable if timely action had been taken.

(b) **TIME FOR COMPLIANCE.**—Upon issuing an order enforcing this title, the court shall specify a reasonable time and conditions for complying with its order, considering the good faith efforts to comply in a timely manner, any effect on the carrier's, manufacturer's, or service provider's ability to continue to do business, the degree of culpability or delay in undertaking efforts to comply, and such other matters as justice may require.

(c) **LIMITATIONS.**—An order enforcing this title may not—

(1) require a telecommunications carrier to meet the Government's demand for interception of communications and acquisition of call-identifying information to any extent in excess of the capacity for which the Attorney General has agreed to reimburse such carrier;

(2) require any telecommunications carrier to comply with assistance capability requirement of section 103 if the Commission has determined (pursuant to section 109(b)(1)) that compliance is not reasonably achievable, unless the Attorney General has agreed (pursuant to section 109(b)(2)) to pay the costs described in section 109(b)(2)(A); or

(3) require a telecommunications carrier to modify, for the purpose of complying with the assistance capability requirements of section 103, any equipment, facility, or service deployed on or before January 1, 1995, unless—

(A) the Attorney General has agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring the equipment, facility, or service into compliance with those requirements; or

(B) the equipment, facility, or service has been replaced or significantly upgraded or otherwise undergoes major modification.

**SEC. 109. [47 U.S.C. 1008] PAYMENT OF COSTS OF TELECOMMUNICATIONS CARRIERS TO COMPLY WITH CAPABILITY REQUIREMENTS.**

(a) **EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED ON OR BEFORE JANUARY 1, 1995.**—The Attorney General may, subject to the availability of appropriations, agree to pay telecommunications carriers for all reasonable costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103.

(b) EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED AFTER JANUARY 1, 1995.—

(1) DETERMINATIONS OF REASONABLY ACHIEVABLE.—The Commission, on petition from a telecommunications carrier or any other interested person, and after notice to the Attorney General, shall determine whether compliance with the assistance capability requirements of section 103 is reasonably achievable with respect to any equipment, facility, or service installed or deployed after January 1, 1995. The Commission shall make such determination within 1 year after the date such petition is filed. In making such determination, the Commission shall determine whether compliance would impose significant difficulty or expense on the carrier or on the users of the carrier's systems and shall consider the following factors:

(A) The effect on public safety and national security.

(B) The effect on rates for basic residential telephone service.

(C) The need to protect the privacy and security of communications not authorized to be intercepted.

(D) The need to achieve the capability assistance requirements of section 103 by cost-effective methods.

(E) The effect on the nature and cost of the equipment, facility, or service at issue.

(F) The effect on the operation of the equipment, facility, or service at issue.

(G) The policy of the United States to encourage the provision of new technologies and services to the public.

(H) The financial resources of the telecommunications carrier.

(I) The effect on competition in the provision of telecommunications services.

(J) The extent to which the design and development of the equipment, facility, or service was initiated before January 1, 1995.

(K) Such other factors as the Commission determines are appropriate.

(2) COMPENSATION.—If compliance with the assistance capability requirements of section 103 is not reasonably achievable with respect to equipment, facilities, or services deployed after January 1, 1995—

(A) the Attorney General, on application of a telecommunications carrier, may agree, subject to the availability of appropriations, to pay the telecommunications carrier for the additional reasonable costs of making compliance with such assistance capability requirements reasonably achievable; and

(B) if the Attorney General does not agree to pay such costs, the telecommunications carrier shall be deemed to be in compliance with such capability requirements.

(c) ALLOCATION OF FUNDS FOR PAYMENT.—The Attorney General shall allocate funds appropriated to carry out this title in accordance with law enforcement priorities determined by the Attorney General.

(d) FAILURE TO MAKE PAYMENT WITH RESPECT TO EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED ON OR BEFORE JANUARY 1,

1995.—If a carrier has requested payment in accordance with procedures promulgated pursuant to subsection (e), and the Attorney General has not agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring any equipment, facility, or service deployed on or before January 1, 1995, into compliance with the assistance capability requirements of section 103, such equipment, facility, or service shall be considered to be in compliance with the assistance capability requirements of section 103 until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification.

(e) COST CONTROL REGULATIONS.—

(1) IN GENERAL.—The Attorney General shall, after notice and comment, establish regulations necessary to effectuate timely and cost-efficient payment to telecommunications carriers under this title, under chapters 119 and 121 of title 18, United States Code, and under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(2) CONTENTS OF REGULATIONS.—The Attorney General, after consultation with the Commission, shall prescribe regulations for purposes of determining reasonable costs under this title. Such regulations shall seek to minimize the cost to the Federal Government and shall—

(A) permit recovery from the Federal Government of—

(i) the direct costs of developing the modifications described in subsection (a), of providing the capabilities requested under subsection (b)(2), or of providing the capacities requested under section 104(e), but only to the extent that such costs have not been recovered from any other governmental or nongovernmental entity;

(ii) the costs of training personnel in the use of such capabilities or capacities; and

(iii) the direct costs of deploying or installing such capabilities or capacities;

(B) in the case of any modification that may be used for any purpose other than lawfully authorized electronic surveillance by a law enforcement agency of a government, permit recovery of only the incremental cost of making the modification suitable for such law enforcement purposes; and

(C) maintain the confidentiality of trade secrets.

(3) SUBMISSION OF CLAIMS.—Such regulations shall require any telecommunications carrier that the Attorney General has agreed to pay for modifications pursuant to this section and that has installed or deployed such modification to submit to the Attorney General a claim for payment that contains or is accompanied by such information as the Attorney General may require.

**SEC. 110. [47 U.S.C. 1009] AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this title a total of \$500,000,000 for fiscal years 1995, 1996, 1997, and 1998. Such sums are authorized to remain available until expended.

**SEC. 111. [47 U.S.C. 1001 note] EFFECTIVE DATE.**

(a) **IN GENERAL.**—Except as provided in subsection (b), this title shall take effect on the date of enactment of this Act.

(b) **ASSISTANCE CAPABILITY AND SYSTEMS SECURITY AND INTEGRITY REQUIREMENTS.**—Sections 103 and 105 of this title shall take effect on the date that is 4 years after the date of enactment of this Act.

**SEC. 112. [47 U.S.C. 1010] REPORTS.**

(a) **REPORTS BY THE ATTORNEY GENERAL.**—

(1) **IN GENERAL.**—On or before November 30, 1995, and on or before November 30 of each year thereafter, the Attorney General shall submit to Congress and make available to the public a report on the amounts paid during the preceding fiscal year to telecommunications carriers under sections 104(e) and 109.

(2) **CONTENTS.**—A report under paragraph (1) shall include—

(A) a detailed accounting of the amounts paid to each carrier and the equipment, facility, or service for which the amounts were paid; and

(B) projections of the amounts expected to be paid in the current fiscal year, the carriers to which payment is expected to be made, and the equipment, facilities, or services for which payment is expected to be made.

(b) **REPORTS BY THE COMPTROLLER GENERAL.**—

(1) On or before April 1, 1996, the Comptroller General of the United States, and every two years thereafter, the Inspector General of the Department of Justice, shall submit to the Congress a report, after consultation with the Attorney General and the telecommunications industry—

(A) describing the type of equipment, facilities, and services that have been brought into compliance under this title; and

(B) reflecting its analysis of the reasonableness and cost-effectiveness of the payments made by the Attorney General to telecommunications carriers for modifications necessary to ensure compliance with this title.

(2) **COMPLIANCE COST ESTIMATES.**—A report under paragraph (1) shall include findings and conclusions on the costs to be incurred by telecommunications carriers to comply with the assistance capability requirements of section 103 after the effective date of such section 103, including projections of the amounts expected to be incurred and a description of the equipment, facilities, or services for which they are expected to be incurred.

## **TITLE II—AMENDMENTS TO TITLE 18, UNITED STATES CODE**

[Title II made amendments to title 18, United States Code.]

### **TITLE III—AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934**

[Title III made amendments to the Communications Act of 1934.]

#### **TITLE IV—TELECOMMUNICATIONS CARRIER COMPLIANCE PAYMENTS**

##### **SEC. 401. [47 U.S.C. 1021] DEPARTMENT OF JUSTICE TELECOMMUNICATIONS CARRIER COMPLIANCE FUND.**

(a) **ESTABLISHMENT OF FUND.**—There is hereby established in the United States Treasury a fund to be known as the Department of Justice Telecommunications Carrier Compliance Fund (hereafter referred to as “the Fund”), which shall be available without fiscal year limitation to the Attorney General for making payments to telecommunications carriers, equipment manufacturers, and providers of telecommunications support services pursuant to section 109 of this Act.

(b) **DEPOSITS TO THE FUND.**—Notwithstanding any other provision of law, any agency of the United States with law enforcement or intelligence responsibilities may deposit as offsetting collections to the Fund any unobligated balances that are available until expended, upon compliance with any Congressional notification requirements for reprogramming of funds applicable to the appropriation from which the deposit is to be made.

(c) **TERMINATION.**—

(1) The Attorney General may terminate the Fund at such time as the Attorney General determines that the Fund is no longer necessary.

(2) Any balance in the Fund at the time of its termination shall be deposited in the General Fund of the Treasury.

(3) A decision of the Attorney General to terminate the Fund shall not be subject to judicial review.

(d) **AVAILABILITY OF FUNDS FOR EXPENDITURE.**—Funds shall not be available for obligation unless an implementation plan as set forth in subsection (e) is submitted to each member of the Committees on the Judiciary and Appropriations of both the House of Representatives and the Senate and the Congress does not by law block or prevent the obligation of such funds. Such funds shall be treated as a reprogramming of funds under section 605 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section and this section.

(e) **IMPLEMENTATION PLAN.**—The implementation plan shall include:

(1) the law enforcement assistance capability requirements and an explanation of law enforcement’s recommended interface;

(2) the proposed actual and maximum capacity requirements for the number of simultaneous law enforcement communications intercepts, pen registers, and trap and trace devices that authorized law enforcement agencies may seek to

conduct, set forth on a county-by-county basis for wireline services and on a market service area basis for wireless services, and the historical baseline of electronic surveillance activity upon which such capacity requirements are based;

(3) a prioritized list of carrier equipment, facilities, and services deployed on or before January 1, 1995, to be modified by carriers at the request of law enforcement based on its investigative needs;

(4) a projected reimbursement plan that estimates the cost for the coming fiscal year and for each fiscal year thereafter, based on the prioritization of law enforcement needs as outlined in (3), of modification by carriers of equipment, facilities and services, installed on or before January 1, 1995.

(f) ANNUAL REPORT TO THE CONGRESS.—The Attorney General shall submit to the Congress each year a report specifically detailing all deposits and expenditures made pursuant to this Act in each fiscal year. This report shall be submitted to each member of the Committees on the Judiciary and Appropriations of both the House of Representatives and the Senate, and to the Speaker and minority leader of the House of Representatives and to the majority and minority leaders of the Senate, no later than 60 days after the end of each fiscal year.

## NATIONAL EMERGENCIES ACT

(Public Law 94-412; 90 Stat. 1255; approved September 14, 1976)

AN ACT To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the “National Emergencies Act”.

### TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. [50 U.S.C. 1601] (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

- (1) any action taken or proceeding pending not finally concluded or determined on such date;
- (2) any action or proceeding based on any act committed prior to such date; or
- (3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words “any national emergency in effect” means a general declaration of emergency made by the President.

### TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. [50 U.S.C. 1621] (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. [50 U.S.C. 1622] (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) there is enacted into law a joint resolution terminating the emergency; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

(c)(1) A joint resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any joint resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a joint resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which man-

agers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

### TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 301. [50 U.S.C. 1631] When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

### TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 401. [50 U.S.C. 1641] (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declarations, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN  
EMERGENCY POWER AND OTHER STATUTES

SEC. 501. [50 U.S.C. 1651] (a) [Section 501(a) amended section 349 of the Immigration and Nationality Act (8 U.S.C. 1481).]

(b) [Section 501(b) amended section 2667 of title 10, United States Code.]

(c) [Section 501(c) repealed the joint resolution entitled “Joint resolution to authorize the temporary continuation of regulation of consumer credit”(12 U.S.C. 249).]

(d) [Section 501(d) repealed section 5(m) the Tennessee Valley Authority Act of 1933 as amended (16 U.S.C. 831d(m)).]

(e) [Section 501(e) repealed section 1383 of title 18, United States Code.]

(f) [Section 501(f) amended section 6 of the Act entitled “An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes”.]

(g) [Section 501(g) repealed Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742).]

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal;

SEC. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) \* \* \* [Repealed—1977]

(2) Act of June 30, 1949 (41 U.S.C. 252);

(3) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(4) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(5) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431 et seq.);

(6) Section 2304(a)(1) of title 10, United States Code;

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress

within two hundred and seventy days after the date of enactment of this Act.

## WAR POWERS RESOLUTION

(Public Law 93-148 [H.J. Res. 542]; 87 Stat. 555; approved November 7, 1973)

JOINT RESOLUTION Concerning the war powers of Congress and the President.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SHORT TITLE

SECTION 1. [50 U.S.C. 1541 note] This joint resolution may be cited as the "War Powers Resolution".

### PURPOSE AND POLICY

SEC. 2. [50 U.S.C. 1541] (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

### CONSULTATION

SEC. 3. [50 U.S.C. 1542] The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

## REPORTING

SEC. 4. [50 U.S.C. 1543] (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace of waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

## CONGRESSIONAL ACTION

SEC. 5. [50 U.S.C. 1544] (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is

earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR  
BILL

SEC. 6. [50 U.S.C. 1545] (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding

any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT  
RESOLUTION

SEC. 7. [50 U.S.C. 1546] (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

SEC. 8. [50 U.S.C. 1547] (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statu-

tory authorization within the meaning of this joint resolution;  
or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

#### SEPARABILITY CLAUSE

SEC. 9. [50 U.S.C. 1548] If any provision of this joint resolution or the application thereof to any person or circumstances is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

#### EFFECTIVE DATE

SEC. 10. This joint resolution shall take effect on the date of its enactment.

## MISCELLANEOUS PROVISIONS FROM THE FOREIGN ASSISTANCE ACT OF 1961

(Public Law 87-195; 75 Stat. 434; approved September 4, 1961)

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### PART II

#### CHAPTER 1—POLICY

SEC. 501. [22 U.S.C. 2301] STATEMENT OF POLICY.—The Congress of the United States reaffirms the policy of the United States to achieve international peace and security through the United Nations so that armed force shall not be used except for individual or collective self-defense. The Congress hereby finds that the efforts of the United States and other friendly countries to promote peace and security continue to require measures of support based upon the principle of effective self-help and mutual aid. It is the purpose of this part to authorize measures in the common defense against internal and external aggression, including the furnishing of military assistance, upon request, to friendly countries and international organizations. In furnishing such military assistance, it remains the policy of the United States to continue to exert maximum efforts to achieve universal control of weapons of mass destruction and universal regulation and reduction of armaments, including armed forces, under adequate safeguards to protect complying countries against violation and invasion.

The Congress recognizes that the peace of the world and the security of the United States are endangered so long as hostile countries continue by threat of military action, by the use of economic pressure, and by internal subversion, or other means to attempt to bring under their domination peoples now free and independent and continue to deny the rights of freedom and self-government to peoples and countries once free but now subject to such domination.

It is the sense of the Congress that an important contribution toward peace would be made by the establishment under the Organization of American States of an international military force.

In enacting this legislation, it is therefore the intention of the Congress to promote the peace of the world and the foreign policy, security, and general welfare of the United States by fostering an improved climate of political independence and individual liberty, improving the ability of friendly countries and international organizations to deter or, if necessary, defeat aggression, facilitating arrangements for individual and collective security, assisting friendly countries to maintain internal security, and creating an environment of security and stability in the developing friendly countries essential to their more rapid social, economic, and political

progress. The Congress urges that all other countries able to contribute join in a common undertaking to meet the goals stated in this part.

It is the sense of the Congress that in the administration of this part priority shall be given to the needs of those countries in danger of becoming victims of aggression or in which the internal security is threatened by internal subversion inspired or supported by hostile countries.

Finally, the Congress reaffirms its full support of the progress of the members of the North Atlantic Treaty Organization toward increased cooperation in political, military, and economic affairs. In particular, the Congress welcomes the steps which have been taken to promote multilateral programs of coordinated procurement, research, development, and production of defense articles and urges that such programs be expanded to the fullest extent possible to further the defense of the North Atlantic area.

**SEC. 502. [22 U.S.C. 2302] UTILIZATION OF DEFENSE ARTICLES AND SERVICES.**—Defense articles and defense services to any country shall be furnished solely for internal security (including for antiterrorism and nonproliferation purposes), for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of assisting foreign military forces in less developed friendly countries (or the voluntary efforts of personnel of the Armed Forces of the United States in such countries) to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the total economic and social development effort.

**SEC. 502A.** [Repealed by Public Law 104–164.]

**SEC. 502B. [22 U.S.C. 2304] HUMAN RIGHTS.**—(a)(1) The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.

(2) Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country, and licenses may not be issued under the Export Administration Act of 1979 for the export of crime control

and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate (when licenses are to be issued pursuant to the Export Administration Act of 1979), that extraordinary circumstances exist warranting provision of such assistance and issuance of such licenses. Assistance may not be provided under chapter 5 of this part to a country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist warranting provision of such assistance.

(3) In furtherance of paragraphs (1) and (2), the President is directed to formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States, through such programs, with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States as expressed in this section or otherwise.

(4) In determining whether the government of a country engages in a consistent pattern of gross violations of internationally recognized human rights, the President shall give particular consideration to whether the government—

(A) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998; or

(B) has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom when such efforts could have been reasonably undertaken.

(b) The Secretary of State shall transmit to the Congress, as part of the presentation materials for security assistance programs proposed for each fiscal year, a full and complete report, prepared with the assistance of the Assistant Secretary of State for Democracy, Human Rights, and Labor and with the assistance of the Ambassador at Large for International Religious Freedom, with respect to practices regarding the observance of and respect for internationally recognized human rights in each country proposed as a recipient of security assistance. Wherever applicable, such report shall include consolidated information regarding the commission of war crimes, crimes against humanity, and evidence of acts that may constitute genocide (as defined in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide and modified by the United States instrument of ratification to that convention and section 2(a) of the Genocide Convention Implementation Act of 1987). Wherever applicable, such report shall include information on practices regarding coercion in population control, including coerced abortion and involuntary sterilization. Such re-

port shall also include, wherever applicable, information on violations of religious freedom, including particularly severe violations of religious freedom (as defined in section 3 of the International Religious Freedom Act of 1998). Such report shall also include, for each country with respect to which the report indicates that extrajudicial killings, torture, or other serious violations of human rights have occurred in the country, the extent to which the United States has taken or will take action to encourage an end to such practices in the country. Each report under this section shall list the votes of each member of the United Nations Commission on Human Rights on all country-specific and thematic resolutions voted on at the Commission's annual session during the period covered during the preceding year. Each report under this section shall describe the extent to which each country has extended protection to refugees, including the provision of first asylum and resettlement. Each report under this section shall also include (i) wherever applicable, a description of the nature and extent of the compulsory recruitment and conscription of individuals under the age of 18 by armed forces of the government of the country, government-supported paramilitaries, or other armed groups, the participation of such individuals in such groups, and the nature and extent that such individuals take a direct part in hostilities, (ii) what steps, if any, taken by the government of the country to eliminate such practices, and (iii) such other information related to the use by such government of individuals under the age of 18 as soldiers, as determined to be appropriate by the Secretary of State. In determining whether a government falls within the provisions of subsection (a)(3) and in the preparation of any report or statement required under this section, consideration shall be given to—

(1) the relevant findings of appropriate international organizations, including nongovernmental organizations, such as the International Committee of the Red Cross; and

(2) the extent of cooperation by such government in permitting an unimpeded investigation by any such organization of alleged violations of internationally recognized human rights.

(c)(1) Upon the request of the Senate or the House of Representatives by resolution of either such House, or upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the Secretary of State shall, within thirty days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Assistant Secretary of State for Democracy, Human Rights, and Labor, with respect to the country designated in such request, setting forth—

(A) all the available information about observance of and respect for human rights and fundamental freedom in that country, and a detailed description of practices by the recipient government with respect thereto;

(B) the steps the United States has taken to—

(i) promote respect for and observance of human rights in that country and discourage any practices which are inimical to internationally recognized human rights, and

(ii) publicly or privately call attention to, and disassociate the United States and any security assistance provided for such country from, such practices;

(C) whether, in the opinion of the Secretary of State, notwithstanding any such practices—

(i) extraordinary circumstances exist which necessitate a continuation of security assistance for such country, and, if so, a description of such circumstances and the extent to which such assistance should be continued (subject to such conditions as Congress may impose under this section), and

(ii) on all the facts it is in the national interest of the United States to provide such assistance; and

(D) such other information as such committee or such House may request.

(2)(A) A resolution of request under paragraph (1) of this subsection shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) The term “certification”, as used in section 601 of such Act, means, for the purposes of this subsection, a resolution of request of the Senate under paragraph (1) of this subsection.

(3) In the event a statement with respect to a country is requested pursuant to paragraph (1) of this subsection but is not transmitted in accordance therewith within thirty days after receipt of such request, no security assistance shall be delivered to such country except as may thereafter be specifically authorized by law from such country unless and until such statement is transmitted.

(4)(A) In the event a statement with respect to a country is transmitted under paragraph (1) of this subsection, the Congress may at any time thereafter adopt a joint resolution terminating, restricting, or continuing security assistance for such country. In the event such a joint resolution is adopted, such assistance shall be so terminated, so restricted, or so continued, as the case may be.

(B) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(C) The term “certification”, as used in section 601 of such Act, means, for the purposes of this paragraph, a statement transmitted under paragraph (1) of this subsection.

(d) For the purposes of this section—

(1) the term “gross violations of internationally recognized human rights” includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person; and

(2) the term “security assistance” means—

(A) assistance under chapter 2 (military assistance) or chapter 4 (economic support fund) or chapter 5 (military education and training) or chapter 6 (peacekeeping operations) or chapter 8 (antiterrorism assistance) of this part;

(B) sales of defense articles or services, extensions of credits (including participations in credits), and guaranties of loans under the Arms Export Control Act; or

(C) any license in effect with respect to the export of defense articles or defense services to or for the armed forces, police, intelligence, or other internal security forces of a foreign country under section 38 of the Arms Export Control Act.

(e) Notwithstanding any other provision of law, funds authorized to be appropriated under part I of this Act may be made available for the furnishing of assistance to any country with respect to which the President finds that such a significant improvement in its human rights record has occurred as to warrant lifting the prohibition on furnishing such assistance in the national interest of the United States.

(f) In allowing the funds authorized to be appropriated by this Act and the Arms Export Control Act, the President shall take into account significant improvements in the human rights records of recipient countries, except that such allocations may not contravene any other provision of law.

(g) Whenever the provisions of subsection (e) or (f) of this section are applied, the President shall report to the Congress before making any funds available pursuant to those subsections. The report shall specify the country involved, the amount and kinds of assistance to be provided, and the justification for providing the assistance, including a description of the significant improvements which have occurred in the country's human rights record.

(h)(1) The report required by subsection (b) shall include the following:

(A) A description of the nature and extent of severe forms of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, in each foreign country.

(B) With respect to each country that is a country of origin, transit, or destination for victims of severe forms of trafficking in persons, an assessment of the efforts by the government of that country to combat such trafficking. The assessment shall address the following:

(i) Whether government authorities in that country participate in, facilitate, or condone such trafficking.

(ii) Which government authorities in that country are involved in activities to combat such trafficking.

(iii) What steps the government of that country has taken to prohibit government officials from participating in, facilitating, or condoning such trafficking, including the investigation, prosecution, and conviction of such officials.

(iv) What steps the government of that country has taken to prohibit other individuals from participating in such trafficking, including the investigation, prosecution, and conviction of individuals involved in severe forms of trafficking in persons, the criminal and civil penalties for such trafficking, and the efficacy of those penalties in eliminating or reducing such trafficking.

(v) What steps the government of that country has taken to assist victims of such trafficking, including efforts

to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.

(vi) Whether the government of that country is cooperating with governments of other countries to extradite traffickers when requested, or, to the extent that such cooperation would be inconsistent with the laws of such country or with extradition treaties to which such country is a party, whether the government of that country is taking all appropriate measures to modify or replace such laws and treaties so as to permit such cooperation.

(vii) Whether the government of that country is assisting in international investigations of transnational trafficking networks and in other cooperative efforts to combat severe forms of trafficking in persons.

(viii) Whether the government of that country refrains from prosecuting victims of severe forms of trafficking in persons due to such victims having been trafficked, and refrains from other discriminatory treatment of such victims.

(ix) Whether the government of that country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.

(C) Such other information relating to trafficking in persons as the Secretary of State considers appropriate.

(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations and other appropriate nongovernmental organizations.

#### CHAPTER 2—MILITARY ASSISTANCE

SEC. 503. [22 U.S.C. 2311] GENERAL AUTHORITY.—(a) The President is authorized to furnish military assistance, on such terms and conditions as he may determine, to any friendly country or international organization, the assisting of which the President finds will strengthen the security of the United States and promote world peace and which is otherwise eligible to receive such assistance, by—

(1) acquiring from any source and providing (by loan or grant) any defense article or defense service;

(2) assigning or detailing members of the Armed Forces of the United States and other personnel of the Department of Defense to perform duties of a non-combatant nature; or

(3) transferring such of the funds appropriated or otherwise made available under this chapter as the President may determine for assistance to a recipient country, to the account in which funds for the procurement of defense articles and defense services under section 21 and section 22 of the Arms Export Control Act have been deposited for such recipient, to be merged with such deposited funds, and to be used solely to meet obligations of the recipient for payment for sales under that Act. Sales which are wholly paid from funds transferred

under paragraph (3) or from funds made available on a non-repayable basis under section 23 of the Arms Export Control Act shall be priced to exclude the costs of salaries of members of the Armed Forces of the United States (other than the Coast Guard).

(b) In addition to such other terms and conditions as the President may determine pursuant to subsection (a), defense articles may be loaned thereunder only if—

(1) there is a bona fide reason, other than the shortage of funds, for providing such articles on a loan basis rather than on a grant basis;

(2) there is a reasonable expectation that such articles will be returned to the agency making the loan at the end of the loan period unless the loan is then renewed;

(3) the loan period is of fixed duration not exceeding five years, during which such article may be recalled for any reason by the United States;

(4) the agency making the loan is reimbursed for the loan based on the amount charged to the appropriation for military assistance under subsection (c); and

(5) the loan agreement provides that (A) if the defense article is damaged while on loan, the country or international organization to which it was loaned will reimburse the United States for the cost of restoring or replacing the defense article, and (B) if the defense article is lost or destroyed while on loan, the country or international organization to which it was loaned will pay to the United States an amount equal to the replacement cost (less any depreciation in the value) of the defense article.

(c)(1) In the case of any loan of a defense article or defense service made under this section, there shall be a charge to the appropriation for military assistance for any fiscal year while the article or service is on loan in an amount based on—

(A) the out-of-pocket expenses authorized to be incurred in connection with such loan during such fiscal year; and

(B) the depreciation which occurs during such year while such article is on loan.

(2) The provisions of this subsection shall not apply—

(A) to any particular defense article or defense service which the United States Government agreed, prior to the date of enactment of this subsection, to lend; and

(B) to any defense article or defense service, or portion thereof, acquired with funds appropriated for military assistance under this Act.

SEC. 504. [22 U.S.C. 2312] AUTHORIZATION.—(a) (1) There are authorized to be appropriated to the President to carry out the purposes of this chapter \$805,100,000 for the fiscal year 1986 and \$805,100,000 for the fiscal year 1987.

(2) Amounts appropriated under this subsection are authorized to remain available until expended.

(b) In order to make sure that a dollar spent on military assistance to foreign countries is as necessary as a dollar spent for the United States military establishment, the President shall establish procedures for programing and budgeting so that programs of mili-

tary assistance come into direct competition for financial support with other activities and programs of the Department of Defense.

SEC. 505. [22 U.S.C. 2314] CONDITIONS OF ELIGIBILITY.—(a) In addition to such other provisions as the President may require, no defense articles or related training or other defense service shall be furnished to any country on a grant basis unless it shall have agreed that—

(1) it will not, without the consent of the President—

(A) permit any use of such articles or related training or other defense service by anyone not an officer, employee, or agent of that country,

transfer, or permit any officer, employee, or agent of that country to transfer such articles or related training or other defense service by gift, sale, or otherwise, or

(C) use or permit the use of such articles or related training or other defense service for purposes other than those for which furnished;

(2) it will maintain the security of such articles or related training or other defense service, and will provide substantially the same degree of security protection afforded to such articles or related training or other defense service by the United States Government;

(3) it will, as the President may require, permit continuous observation and review by, and furnish necessary information to, representatives of the United States Government with regard to the use of such articles or related training or other defense service; and

(4) unless the President consents to other disposition, it will return to the United States Government for such use or disposition as the President considers in the best interests of the United States, such articles or related training or other defense service which are no longer needed for the purposes for which furnished.

(b) No defense articles shall be furnished on a grant basis to any country at a cost in excess of \$3,000,000 in any fiscal year unless the President determines—

(1) that such country conforms to the purposes and principles of the Charter of the United Nations;

(2) that such defense articles will be utilized by such country for the maintenance of its own defensive strength, or the defensive strength of the free world;

(3) that such country is taking all reasonable measures, consistent with its political and economic stability, which may be needed to develop its defense capacities; and

(4) that the increased ability of such country to defend itself is important to the security of the United States.

(c) The President shall regularly reduce and, with such deliberate speed as orderly procedure and other relevant considerations, including prior commitments, will permit, shall terminate all further grants of military equipment and supplies to any country having sufficient wealth to enable it, in the judgment of the President, to maintain and equip its own military forces at adequate strength, without undue burden to its economy.

(d)(1) Assistance and deliveries of assistance under this chapter to any country shall be terminated as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, the Mutual Security Act of 1954, or any predecessor Foreign Assistance Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act (A) by using such articles or services for a purpose not authorized under section 502 or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 502, for a purpose not authorized under such agreement; (B) by transferring such articles or services to, or permitting any use of such articles or services by, anyone not an officer, employee, or agent of the recipient country without the consent of the President; or (C) by failing to maintain the security of such articles or services.

(2)(A) Assistance and deliveries of assistance shall be terminated pursuant to paragraph (1) of this subsection if the President so determines and so states in writing to the Congress, or if the Congress so finds by joint resolution.

(B) The President shall report to the Congress promptly upon the receipt of information that a violation described in paragraph (1) of this subsection may have occurred.

(3) Assistance to a country shall remain terminated in accordance with paragraph (1) of this subsection until such time as—

(A) the President determines that the violation has ceased; and

(B) the country concerned has given assurances satisfactory to the President that such violation will not recur.

(4) The authority contained in section 614(a) of this Act may not be used to waive the provisions of this section with respect to further assistance under this chapter.

(e) In considering a request for approval of any transfer of any weapon, weapons system, munitions, aircraft, military boat, military vessel, or other implement of war to another country, the President shall not give his consent under subsection (a)(1) or (a)(4) to the transfer unless the United States itself would transfer the defense article under consideration to that country. In addition, the President shall not give his consent under subsection (a)(1) or (a)(4) to the transfer of any significant defense articles on the United States Munitions List unless the foreign country requesting consent to transfer agrees to demilitarize such defense articles prior to transfer, or the proposed recipient foreign country provides a commitment in writing to the United States Government that it will not transfer such defense articles if not demilitarized, to any other foreign country or person without first obtaining the consent of the President.

(f) Effective July 1, 1974, no defense article shall be furnished to any country on a grant basis unless such country shall have agreed that the net proceeds of sale received by such country in disposing of any weapon, weapons system, munition, aircraft, military boat, military vessel, or other implement of war received under this chapter will be paid to the United States Government and shall be available to pay all official costs of the United States

Government payable in the currency of that country, including all costs relating to the financing of international educational and cultural exchange activities in which that country participates under the programs authorized by the Mutual Educational and Cultural Exchange Act of 1961. In the case of items which were delivered prior to 1985, the President may waive the requirement that such net proceeds be paid to the United States Government if he determines that to do so is in the national interest of the United States.

(g) (1) It is the policy of the United States that no assistance under this chapter should be furnished to any foreign country, the laws, regulations, official policies, or governmental practices of which prevent any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) from participating in the furnishing of defense articles or defense services under this chapter on the basis of race, religion, national origin, or sex.

(2)(A) No agency performing functions under this chapter shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(B) Each contract entered into by any such agency for the performance of any function under this chapter shall contain a provision to the effect that no person, partnership, corporation, or other entity performing functions pursuant to such contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(3) The President shall promptly transmit reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate concerning any transaction in which any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) is prevented by a foreign government on the basis of race, religion, national origin, or sex, from participating in the furnishing of assistance under this chapter, or education and training under chapter 5, to any foreign country. Such reports shall include (A) a description of the facts and circumstances of any such discrimination, (B) the response thereto on the part of the United States or any agency or employee thereof, and (C) the result of such response, if any.

(4)(A) Upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the President shall, within 60 days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Assistant Secretary of State for Democracy, Human Rights, and Labor, with respect to the country designated in such request, setting forth—

(ii) the response of the United States thereto and the results of such response;

(iii) whether, in the opinion of the President, notwithstanding any such policies or practices—

(I) extraordinary circumstances exist which necessitate a continuation of such assistance or education and training transaction, and, if so, a description of such circumstances and the extent to which such assistance or education and training transaction should be continued (subject to such conditions as Congress may impose under this section), and

(II) on all the facts it is in the national interest of the United States to continue such assistance or education and training transaction; and

(iv) such other information as such committee may request.

(B) In the event a statement with respect to an assistance or training transaction is requested pursuant to subparagraph (A) of this paragraph but is not transmitted in accordance therewith within 60 days after receipt of such request, such assistance or training transaction shall be suspended unless and until such statement is transmitted.

(C)(i) In the event a statement with respect to an assistance or training transaction is transmitted under subparagraph (A) of this paragraph, the Congress may at any time thereafter adopt a joint resolution terminating or restricting such assistance or training transaction.

(ii) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(iii) The term "certification", as used in section 601 of such Act, means, for the purposes of this paragraph, a statement transmitted under subparagraph (A) of this paragraph.

SEC. 506. [22 U.S.C. 2318] SPECIAL AUTHORITY.—(a)(1) If the President determines and reports to the Congress in accordance with section 652 of this Act that—

(A) an unforeseen emergency exists which requires immediate military assistance to a foreign country or international organization; and

(B) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except this section;

he may direct, for the purposes of this part, the drawdown of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training, of an aggregate value of not to exceed \$100,000,000 in any fiscal year.

(2)(A) If the President determines and reports to the Congress in accordance with section 652 of this Act that it is in the national interest of the United States to draw down articles and services from the inventory and resources of any agency of the United States Government and military education and training from the Department of Defense, the President may direct the drawdown of such articles, services, and military education and training—

(i) for the purposes and under the authorities of—

(I) chapter 8 of part I (relating to international narcotics control assistance);

(II) chapter 9 of part I (relating to international disaster assistance);

(III) chapter 8 of part II (relating to antiterrorism assistance);

(IV) chapter 9 of part II (relating to non-proliferation assistance); or

(V) the Migration and Refugee Assistance Act of 1962; or

(ii) for the purpose of providing such articles, services, and military education and training to Vietnam, Cambodia, and Laos as the President determines are necessary—

(I) to support cooperative efforts to locate and repatriate members of the United States Armed Forces and civilians employed directly or indirectly by the United States Government who remain unaccounted for from the Vietnam War; and

(II) to ensure the safety of United States Government personnel engaged in such cooperative efforts and to support Department of Defense-sponsored humanitarian projects associated with such efforts.

(B) An aggregate value of not to exceed \$200,000,000 in any fiscal year of such articles, services, and military education and training may be provided pursuant to subparagraph (A) of this paragraph—

(i) not more than \$75,000,000 of which may be provided from the drawdown from the inventory and resources of the Department of Defense;

(ii) not more than \$75,000,000 of which may be provided pursuant to clause (i)(I) of such subparagraph; and

(iii) not more than \$15,000,000 of which may be provided to Vietnam, Cambodia, and Laos pursuant to clause (ii) of such subparagraph.

(b)(1) The authority contained in this section shall be effective for any such emergency only upon prior notification to the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Appropriations of each House of Congress. In the case of drawdowns authorized by subclauses (I) and (III) of subsection (a)(2)(A)(i), notifications shall be provided to those committees at least 15 days in advance of the drawdowns in accordance with the procedures applicable to reprogramming notifications under section 634A.

(2) The President shall keep the Congress fully and currently informed of all defense articles, defense services, and military education and training provided under this section, including providing the Congress with a report detailing all defense articles, defense services, and military education and training delivered to the recipient country or international organization upon delivery of such articles or upon completion of such services or education and training. Such report shall also include whether any savings were realized by utilizing commercial transport services rather than acquiring those services from United States Government transport assets.

(c) For the purposes of any provision of law that authorizes the drawdown of defense or other articles or commodities, or defense or other services from an agency of the United States Government, such drawdown may include the supply of commercial transportation and related services that are acquired by contract for the purposes of the drawdown in question if the cost to acquire such commercial transportation and related services is less than the cost to the United States Government of providing such services from existing agency assets.

(d) There are authorized to be appropriated to the President such sums as may be necessary to reimburse the applicable appropriation, fund, or account for defense articles, defense services, and military education and training provided under this section.

SEC. 507. RESTRICTIONS ON MILITARY AID TO LATIN AMERICA.—  
\* \* \* [Repealed—1973]

SEC. 508. RESTRICTIONS ON MILITARY AID TO AFRICA.—\* \* \*  
[Repealed—1973]

SEC. 509. CERTIFICATION OF RECIPIENT'S CAPABILITY.—\* \* \*  
[Repealed—1973]

SEC. 510. RESTRICTIONS ON TRAINING FOREIGN MILITARY STUDENTS.—\* \* \* [Repealed—1976]

SEC. 511. [22 U.S.C. 2321d] CONSIDERATIONS IN FURNISHING MILITARY ASSISTANCE.—Decisions to furnish military assistance made under this part shall take into account whether such assistance will—

- (1) contribute to an arms race;
- (2) increase the possibility of outbreak or escalation of conflict; or
- (3) prejudice the development of bilateral or multilateral arms control arrangements.

SEC. 512. MILITARY ASSISTANCE ADVISORY GROUPS AND MISSIONS.—\* \* \* [Repealed—1973]

SEC. 513. MILITARY ASSISTANCE AUTHORIZATIONS FOR THAILAND AND LAOS, AND SOUTH VIETNAM.—\* \* \* [Repealed—1981]

SEC. 514. [22 U.S.C. 2321h] STOCKPILING OF DEFENSE ARTICLES FOR FOREIGN COUNTRIES.—(a) No defense article in the inventory of the Department of Defense which is set aside, reserved, or in any way earmarked or intended for future use by any foreign country may be made available to or for use by any foreign country unless such transfer is authorized under this Act or the Arms Export Control Act, or any subsequent corresponding legislation, and the value of such transfer is charged against funds authorized under such legislation or against the limitations specified in such legislation, as appropriate, for the fiscal period in which such defense article is transferred. For purposes of this subsection, "value" means the acquisition cost plus crating, packing, handling, and transportation costs incurred in carrying out this section.

(b)(1) The value of defense articles to be set aside, earmarked, reserved, or intended for use as war reserve stocks for allied or other foreign countries (other than for purposes of the North Atlantic Treaty Organization or in the implementation of agreements with Israel) in stockpiles located in foreign countries may not exceed in any fiscal year an amount that is specified in security assistance authorizing legislation for that fiscal year.

(2)(A) The value of such additions to stockpiles of defense articles in foreign countries shall not exceed \$100,000,000 for fiscal year 2003.

(B) Of the amount specified in subparagraph (A) for fiscal year 2003, not more than \$100,000,000 may be made available for stockpiles in the State of Israel.

(c) LOCATION OF STOCKPILES OF DEFENSE ARTICLES.—

(1) LIMITATION.—Except as provided in paragraph (2), no stockpile of defense articles may be located outside the boundaries of a United States military base or a military base used primarily by the United States.

(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to stockpiles of defense articles located in the Republic of Korea, Thailand, any country that is a member of the North Atlantic Treaty Organization, any country that is a major non-NATO ally, or any other country the President may designate. At least 15 days before designating a country pursuant to the last clause of the preceding sentence, the President shall notify the congressional committees specified in section 634A(a) in accordance with the procedures applicable to reprogramming notifications under that section.

(d) No defense article transferred from any stockpile which is made available to or for use by any foreign country may be considered an excess defense article for the purpose of determining the value thereof.

SEC. 515. [22 U.S.C. 2321i] OVERSEAS MANAGEMENT OF ASSISTANCE AND SALES PROGRAMS.—(a) In order to carry out his responsibilities for the management of international security assistance programs conducted under this chapter, chapter 5 of this part, and the Arms Export Control Act, the President may assign members of the Armed Forces of the United States to a foreign country to perform one or more of the following functions:

- (1) equipment and services case management;
- (2) training management;
- (3) program monitoring;
- (4) evaluation and planning of the host government's military capabilities and requirements;
- (5) administrative support;
- (6) promoting rationalization, standardization, interoperability, and other defense cooperation measures ; and
- (7) liaison functions exclusive of advisory and training assistance.

(b) Advisory and training assistance conducted by military personnel assigned under this section shall be kept to an absolute minimum. It is the sense of the Congress that advising and training assistance in countries to which military personnel are assigned under this section shall be provided primarily by other personnel who are not assigned under this section and who are detailed for limited periods to perform specific tasks.

(c)(1) The number of members of the Armed Forces assigned to a foreign country under this section may not exceed six unless specifically authorized by the Congress. The President may waive this limitation if he determines and reports to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs

of the House of Representatives, 30 days prior to the introduction of the additional military personnel, that United States national interests require that more than six members of the Armed Forces be assigned under this section to carry out international security assistance programs in a country not specified in this paragraph. Pakistan, Tunisia, El Salvador, Honduras, Colombia, Indonesia, the Republic of Korea, the Philippines, Thailand, Egypt, Jordan, Morocco, Saudi Arabia, Greece, Portugal, Spain, and Turkey are authorized to have military personnel strengths larger than six under this section to carry out international security assistance programs.

(2) The total number of members of the Armed Forces assigned under this section to a foreign country in a fiscal year may not exceed the number justified to the Congress for that country in the congressional presentation materials for that fiscal year, unless the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives are notified 30 days in advance of the introduction of the additional military personnel.

(d) Effective October 1, 1989, the entire costs (excluding salaries of the United States military personnel other than the Coast Guard) of overseas management of international security assistance programs under this section shall be charged to or reimbursed from funds made available to carry out this chapter or the Arms Export Control Act, other than any such costs which are either paid directly for such defense services under section 21(a) of the Arms Export Control Act or reimbursed from charges for services collected from foreign governments pursuant to section 21(e) and section 43(b) of that Act.

(e) Members of the Armed Forces assigned to a foreign country under this section shall serve under the direction and supervision of the Chief of the United States Diplomatic Mission to that country.

(f) The President shall continue to instruct United States diplomatic and military personnel in the United States missions abroad that they should not encourage, promote, or influence the purchase by any foreign country of United States-made military equipment, unless they are specifically instructed to do so by an appropriate official of the executive branch.

**SEC. 516. [22 U.S.C. 2321j] AUTHORITY TO TRANSFER EXCESS DEFENSE ARTICLES.**

(a) **AUTHORIZATION.**—The President is authorized to transfer excess defense articles under this section to countries for which receipt of such articles was justified pursuant to the annual congressional presentation documents for military assistance programs, or for programs under chapter 8 of part I of this Act, submitted under section 634 of this Act, or for which receipt of such articles was separately justified to the Congress, for the fiscal year in which the transfer is authorized.

(b) **LIMITATIONS ON TRANSFERS.**—(1) The President may transfer excess defense articles under this section only if—

(A) such articles are drawn from existing stocks of the Department of Defense;

(B) funds available to the Department of Defense for the procurement of defense equipment are not expended in connection with the transfer;

(C) the transfer of such articles will not have an adverse impact on the military readiness of the United States;

(D) with respect to a proposed transfer of such articles on a grant basis, such a transfer is preferable to a transfer on a sales basis, after taking into account the potential proceeds from, and likelihood of, such sales, and the comparative foreign policy benefits that may accrue to the United States as the result of a transfer on either a grant or sales basis;

(E) the President determines that the transfer of such articles will not have an adverse impact on the national technology and industrial base and, particularly, will not reduce the opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are transferred; and

(F) the transfer of such articles is consistent with the policy framework for the Eastern Mediterranean established under section 620C of this Act.

(2) Accordingly, for the four-year period beginning on October 1, 1996, and thereafter for the four-period<sup>1</sup> beginning on October 1, 2000, the President shall ensure that excess defense articles offered to Greece and Turkey under this section will be made available consistent with the manner in which the President made available such excess defense articles during the four-year period that began on October 1, 1992, pursuant to section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990.

(c) TERMS OF TRANSFERS.—

(1) NO COST TO RECIPIENT COUNTRY.—Excess defense articles may be transferred under this section without cost to the recipient country.

(2) PRIORITY.—Notwithstanding any other provision of law, the delivery of excess defense articles under this section to member countries of the North Atlantic Treaty Organization (NATO) on the southern and southeastern flank of NATO, to major non-NATO allies on such southern and southeastern flank, and to the Philippines shall be given priority to the maximum extent feasible over the delivery of such excess defense articles to other countries.

(d) WAIVER OF REQUIREMENT FOR REIMBURSEMENT OF DEPARTMENT OF DEFENSE EXPENSES.—Section 632(d) shall not apply with respect to transfers of excess defense articles (including transportation and related costs) under this section.

(e) TRANSPORTATION AND RELATED COSTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), funds available to the Department of Defense may not be expended for crating, packing, handling, and transportation of excess defense articles transferred under the authority of this section.

<sup>1</sup> So in law. Should probably be "four-year period".

(2) EXCEPTION.—The President may provide for the transportation of excess defense articles without charge to a country for the costs of such transportation if—

(A) it is determined that it is in the national interest of the United States to do so;

(B) the recipient is a developing country receiving less than \$10,000,000 of assistance under chapter 5 of this part of this Act (relating to international military education and training) or section 23 of the Arms Export Control Act (22 U.S.C. 2763; relating to the Foreign Military Financing program) in the fiscal year in which the transportation is provided;

(C) the total weight of the transfer does not exceed 50,000 pounds; and

(D) such transportation is accomplished on a space available basis.

(f) ADVANCE NOTIFICATION TO CONGRESS FOR TRANSFER OF CERTAIN EXCESS DEFENSE ARTICLES.—

(1) IN GENERAL.—The President may not transfer excess defense articles that are significant military equipment (as defined in section 47(9) of the Arms Export Control Act) or excess defense articles valued (in terms of original acquisition cost) at \$7,000,000 or more, under this section or under the Arms Export Control Act (22 U.S.C. 2751 et seq.) until 30 days after the date on which the President has provided notice of the proposed transfer to the congressional committees specified in section 634A(a) in accordance with procedures applicable to re-programming notifications under that section.

(2) CONTENTS.—Such notification shall include—

(A) a statement outlining the purposes for which the article is being provided to the country, including whether such article has been previously provided to such country;

(B) an assessment of the impact of the transfer on the military readiness of the United States;

(C) an assessment of the impact of the transfer on the national technology and industrial base and, particularly, the impact on opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are to be transferred; and

(D) a statement describing the current value of such article and the value of such article at acquisition.

(g) AGGREGATE ANNUAL LIMITATION.—

(1) IN GENERAL.—The aggregate value of excess defense articles transferred to countries under this section in any fiscal year may not exceed \$425,000,000.

(2) EFFECTIVE DATE.—The limitation contained in paragraph (1) shall apply only with respect to fiscal years beginning after fiscal year 1996.

(h) CONGRESSIONAL PRESENTATION DOCUMENTS.—Documents described in subsection (a) justifying the transfer of excess defense articles shall include an explanation of the general purposes of providing excess defense articles as well as a table which provides an aggregate annual total of transfers of excess defense articles in the

preceding year by country in terms of offers and actual deliveries and in terms of acquisition cost and current value. Such table shall indicate whether such excess defense articles were provided on a grant or sale basis.

(i) **EXCESS COAST GUARD PROPERTY.**—For purposes of this section, the term “excess defense articles” shall be deemed to include excess property of the Coast Guard, and the term “Department of Defense” shall be deemed, with respect to such excess property, to include the Coast Guard.

**SEC. 517. [22 U.S.C. 2321k] DESIGNATION OF MAJOR NON-NATO ALLIES.**

(a) **NOTICE TO CONGRESS.**—The President shall notify the Congress in writing at least 30 days before—

(1) designating a country as a major non-NATO ally for purposes of this Act and the Arms Export Control Act (22 U.S.C. 2751 et seq.); or

(2) terminating such a designation.

(b) **INITIAL DESIGNATIONS.**—Australia, Egypt, Israel, Japan, the Republic of Korea, and New Zealand shall be deemed to have been so designated by the President as of the effective date of this section, and the President is not required to notify the Congress of such designation of those countries.

SECS. 518–520. [Repealed by Public Law 104–164.]

CHAPTER 3—FOREIGN MILITARY SALES

**SEC. 521. ADMINISTRATION OF SALES PROGRAMS INVOLVING DEFENSE ARTICLES AND SERVICES.**—\* \* \* [Repealed—1968]

**SEC. 522. SALES FROM STOCK.**—\* \* \* [Repealed—1968]

**SEC. 523. PROCUREMENT OF SALES.**—\* \* \* [Repealed—1968]

**SEC. 524. [22 U.S.C. 2344] REIMBURSEMENTS.**—(a) Whenever funds made available for use under this part have been or are used to furnish military assistance on cash or credit terms, United States dollar repayments, including dollar proceeds derived from the sale of foreign currency repayments to any agency or program of the United States Government, receipts received from the disposition of evidences of indebtedness and charges (including fees and premiums) or interest collected shall be credited to a separate fund account and, shall be available until expended solely for the purposes of financing sales and guaranties, including the overhead costs thereof, and, notwithstanding any provision of law relating to receipts and credits accruing to the United States Government, repayment in foreign currency may be used to carry out this part. Such amounts of the appropriations made available under this part (including unliquidated balances of funds heretofore obligated for financing sales and guaranties) as may be determined by the President shall be transferred to, and merged with the separate fund account.

(b)(1) The special fund account established under subsection (a) of this section shall terminate as of the end of June 30, 1968, or on such earlier date as may be selected by the President.

(2) Upon the termination of such fund account pursuant to paragraph (1), all of the assets of such fund account (including loans and other payments receivable) shall be transferred to a special account in the Treasury, which special account shall be avail-

able solely for the purpose of discharging outstanding liabilities and obligations of the United States arising out of credit sales agreements entered into, and guaranties issued, under this part, prior to June 30, 1968. Any moneys in such special account in excess of the aggregate United States dollar amount of such liabilities and obligations shall be transferred from time to time to the general fund of the Treasury.

(3) \* \* \* [Repealed—1968]

SEC. 525. GUARANTIES.—\* \* \* [Repealed—1968]

#### CHAPTER 4—ECONOMIC SUPPORT FUND

SEC. 531. [22 U.S.C. 2346] AUTHORITY.—(a) The Congress recognizes that, under special economic, political, or security conditions, the national interests of the United States may require economic support for countries in amounts which could not be justified solely under chapter 1 of part I or, in the case of countries in sub-Saharan Africa, chapter 10 of part I. In such cases, the President is authorized to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. To the maximum extent feasible, the President shall provide assistance under this chapter consistent with the policy directions, purposes, and programs of part I of this Act.

(b) The Secretary of State shall be responsible for policy decisions and justifications for economic support programs under this chapter, including determinations of whether there will be an economic support program for a country and the amount of the program for each country. The Secretary shall exercise this responsibility in cooperation with the Administrator of the agency primarily responsible for administering part I of this Act.

(c) As part of the annual presentation materials for foreign assistance submitted to the Congress, the agency primarily responsible for administering this part shall provide a detailed justification for the uses and the purposes of the funds provided under this chapter. Such material shall include, but not be limited to, information concerning the amounts and kinds of cash grant transfers, the amounts and kinds of budgetary and balance-of-payments support provided, and the amounts and kinds of project assistance provided with funds made available under this chapter.

(d) [Repealed by section 533(a)(5) of Public Law 105–277 (112 Stat. 2681–180).]

(e) Amounts appropriated to carry out this chapter shall be available for economic programs and may not be used for military or paramilitary purposes.

SEC. 532. [22 U.S.C. 2346a] AUTHORIZATIONS OF APPROPRIATIONS.—(a) There are authorized to be appropriated to the President to carry out the purposes of this chapter—

(1) \$2,015,000,000 for the fiscal year 1986 and \$2,015,000,000 for the fiscal year 1987 for the following countries signing the Camp David agreement: Israel and Egypt; and

(2) \$1,785,000,000 for the fiscal year 1986 and \$1,785,000,000 for the fiscal year 1987 for assistance under

this chapter for recipients or purposes other than the countries referred to in paragraph (1).

(b) Amounts appropriated to carry out this chapter are authorized to remain available until expended.

SEC. 533. [22 U.S.C. 2346b] EMERGENCY ASSISTANCE.—(a) Of the funds appropriated to carry out this chapter up to \$75,000,000 for the fiscal year 1986 and up to \$75,000,000 for the fiscal year 1987 may be made available for emergency use under this chapter when the national interests of the United States urgently require economic support to promote economic or political stability.

(b) Notwithstanding any provision of this chapter or of an appropriations act (including a joint resolution making continuing appropriations) which earmarks funds available to carry out this chapter for a specific country or purpose, up to 5 percent of each amount so earmarked may be used to carry out this section.

SEC. 534. [22 U.S.C. 2346c] ADMINISTRATION OF JUSTICE.—(a) The President may furnish assistance under this chapter to countries and organizations, including national and regional institutions, in order to strengthen the administration of justice in countries in Latin America and the Caribbean.

(b) Assistance under this section may only include—

(1) support for specialized professional training, scholarships, and exchanges for continuing legal education;

(2) programs to enhance prosecutorial and judicial capabilities and protection for participants in judicial cases;

(3) NOTWITHSTANDING SECTION 660 OF THIS ACT—

(A) programs to enhance professional capabilities to carry out investigative and forensic functions conducted under judicial or prosecutorial control;

(B) programs to assist in the development of academic instruction and curricula for training law enforcement personnel;

(C) programs to improve the administrative and management capabilities of law enforcement agencies, especially their capabilities relating to career development, personnel evaluation, and internal discipline procedures; and

(D) programs, conducted through multilateral or regional institutions, to improve penal institutions and the rehabilitation of offenders;

(4) strengthening professional organizations in order to promote services to members and the role of the bar in judicial selection, enforcement of ethical standards, and legal reform;

(5) increasing the availability of legal materials and publications;

(6) seminars, conferences, and training and educational programs to improve the administration of justice and to strengthen respect for the rule of law and internationally recognized human rights; and

(7) revision and modernization of legal codes and procedures.

(c) Not more than \$20,000,000 of the funds made available to carry out this chapter for any fiscal year shall be available to carry

out this section, in addition to amounts otherwise available for such purposes.

(d) Funds may not be obligated for assistance under this section unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate are notified of the amount and nature of the proposed assistance at least 15 days in advance in accordance with the procedures applicable to reprogrammings pursuant to section 634A of this Act.

(e) Personnel of the Department of Defense and members of the United States Armed Forces may not participate in the provision of training under this section. Of the funds made available to carry out this section, not more than \$10,000,000 may be made available in fiscal year 1991 to carry out the provisions of subsection (b)(3) of this section. The authority of this section shall expire on September 30, 1991.

\* \* \* \* \*

### PART III

#### CHAPTER 1—GENERAL PROVISIONS

\* \* \* \* \*

SEC. 614. [22 U.S.C. 2364] SPECIAL AUTHORITIES.—(a) (1) The President may authorize the furnishing of assistance under this Act without regard to any provision of this Act, the Arms Export Control Act, any law relating to receipts and credits accruing to the United States, and any Act authorizing or appropriating funds for use under this Act, in furtherance of any of the purposes of this Act, when the President determines, and so notifies in writing the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that to do so is important to the security interests of the United States.

(2) The President may make sales, extend credit, and issue guarantees under the Arms Export Control Act, without regard to any provision of this Act, the Arms Export Control Act, any law relating to receipts and credits accruing to the United States, and any Act authorizing or appropriating funds for use under the Arms Export Control Act, in furtherance of any of the purposes of such Act, when the President determines, and so notifies in writing the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that to do so is vital to the national security interests of the United States.

(3) Before exercising the authority granted in this subsection, the President shall consult with, and shall provide a written policy justification to, the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(4) (A) The authority of this subsection may not be used in any fiscal year to authorize—

(i) more than \$750,000,000 in sales to be made under the Arms Export Control Act;

(ii) the use of more than \$250,000,000 of funds made available for use under this Act or the Arms Export Control Act; and

(iii) the use of more than \$100,000,000 of foreign currencies accruing under this Act or any other law.

(B) If the authority of this subsection is used both to authorize a sale under the Arms Export Control Act and to authorize funds to be used under the Arms Export Control Act or under this Act with respect to the financing of that sale, then the use of the funds shall be counted against the limitation in subparagraph (A)(ii) and the portion, if any, of the sale which is not so financed shall be counted against the limitation in subparagraph (A)(i).

(C) Not more than \$50,000,000 of the \$250,000,000 limitation provided in subparagraph (A)(ii) may be allocated to any one country in any fiscal year unless that country is a victim of active aggression, and not more than \$500,000,000 of the aggregate limitation of \$1,000,000,000 provided in subparagraphs (A)(i) and (A)(ii) may be allocated to any one country in any fiscal year.

(5) The authority of this section may not be used to waive the limitations on transfers contained in section 610(a) of this Act.

(b) Whenever the President determines it to be important to the national interest, he may use funds available for the purposes of chapter 4 of part I in order to meet the responsibilities or objectives of the United States in Germany, including West Berlin, and without regard to such provisions of law as he determines should be disregarded to achieve this purpose.

(c) The President is authorized to use amounts not to exceed \$50,000,000 of the funds made available under this Act pursuant to his certification that it is inadvisable to specify the nature of the use of such funds, which certification shall be deemed to be a sufficient voucher for such amounts. The President shall fully inform the chairman and ranking minority member of the Committee on Foreign Affairs of the House of Representatives and the chairman and ranking minority member of the Committee on Foreign Relations of the Senate of each use of funds under this subsection prior to the use of such funds.

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**TITLE II OF THE STATE DEPARTMENT BASIC  
AUTHORITIES ACT OF 1956**

**TITLE II—AUTHORITIES RELATING TO THE REGULATION  
OF FOREIGN MISSIONS**

DECLARATION OF FINDINGS AND POLICY

SEC. 201. [22 U.S.C. 4301] (a) The Congress finds that the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities, is a proper subject for the exercise of Federal jurisdiction.

(b) The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

(c) The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission as well as matters relating to the protection of the interests of the United States.

DEFINITIONS

SEC. 202. [22 U.S.C. 4302] (a) For purposes of this title—

(1) “benefit” (with respect to a foreign mission) means any acquisition, or authorization for an acquisition, in the United States by or for a foreign mission, including the acquisition of—

(A) real property by purchase, lease, exchange, construction, or otherwise,

(B) public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services,

(C) supplies, maintenance, and transportation,

(D) locally engaged staff on a temporary or regular basis,

(E) travel and related services,

(F) protective services, and

(G) financial and currency exchange services,

and includes such other benefits as the Secretary may designate;

(2) "chancery" means the principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and includes the site and any building on such site which is used for such purposes;

(3) "foreign mission" means any mission to or agency or entity in the United States which is involved in the diplomatic, consular, or other activities of, or which is substantially owned or effectively controlled by—

(A) a foreign government, or

(B) an organization (other than an international organization, as defined in section 209(b) of this title) representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States or which engages in some aspect of the conduct of the international affairs of such territory or political entity,

including any real property of such a mission and including the personnel of such a mission;

(4) "real property" includes any right, title, or interest in or to, or the beneficial use of, any real property in the United States, including any office or other building;

(5) "Secretary" means the Secretary of State;

(6) "sending State" means the foreign government, territory, or political entity represented by a foreign mission; and

(7) "United States" means, when used in a geographic sense, the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) Determinations with respect to the meaning and applicability of the terms used in subsection (a) shall be committed to the discretion of the Secretary.

#### AUTHORITIES OF THE SECRETARY OF STATE

SEC. 203. [22 U.S.C. 4303] The Secretary shall carry out the following functions:

(1) Assist agencies of Federal, State, and municipal government with regard to ascertaining and according benefits, privileges, and immunities to which a foreign mission may be entitled.

(2) Provide or assist in the provision of benefits for or on behalf of a foreign mission in accordance with section 204.

(3) As determined by the Secretary, dispose of property acquired in carrying out the purposes of this Act.

(4) As determined by the Secretary, designate an office within the Department of State to carry out the purposes of this Act. If such an office is established, the President may appoint, by and with the advice and consent of the Senate, a Director, with the rank of ambassador. Of the Director and the next most senior person in the office, one should be an individual who has served in the Foreign Service and the other

should be an individual who has served in the United States intelligence community.

(5) Perform such other functions as the Secretary may determine necessary in furtherance of the policy of this title.

#### PROVISION OF BENEFITS

SEC. 204. [22 U.S.C. 4304] (a) Upon the request of a foreign mission, benefits may be provided to or for that foreign mission by or through the Secretary on such terms and conditions as the Secretary may approve.

(b) If the Secretary determines that such action is reasonably necessary on the basis of reciprocity or otherwise—

(1) to facilitate relations between the United States and a sending State,

(2) to protect the interests of the United States,

(3) to adjust for costs and procedures of obtaining benefits for missions of the United States abroad,

(4) to assist in resolving a dispute affecting United States interests and involving a foreign mission or sending State, or

(5) subject to subsection (f), to implement an exchange of property between the Government of the United States and the government of a foreign country, such property to be used by each government in the respective receiving state for, or in connection with, diplomatic or consular establishments,

then the Secretary may require a foreign mission (A) to obtain benefits from or through the Secretary on such terms and conditions as the Secretary may approve, or (B) to forego the acceptance, use, or relations of any benefit or to comply with such terms and conditions as the Secretary may determine as a condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention, or use of any real property, or the application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State, or municipal governmental authority, or any entity providing public services).

(c) Terms and conditions established by the Secretary under this section may include—

(1) a requirement to pay to the Secretary a surcharge or fee, and

(2) a waiver by a foreign mission or any assignee of or person deriving rights from a foreign mission of any recourse against any governmental authority, any entity providing public services, any employee or agent of such an authority or entity, or any other person, in connection with any action determined by the Secretary to be undertaken in furtherance of this title.

(d) For purposes of effectuating a waiver of recourse which is required under this section, the Secretary may designate any officer of the Department of State as the agent of a foreign mission (or of any assignee of or person deriving rights from a foreign mission). Any such waiver by an officer so designated shall for all purposes (including any court or administrative proceeding) be deemed to be a waiver by the foreign mission (or the assignee of or other person deriving rights from a foreign mission).

(e) Nothing in this title shall be deemed to preclude or limit in any way the authority of the United States Secret Service to provide protective services pursuant to section 202 of title 3, United States Code, or section 3056 of title 18, United States Code, at a level commensurate with protective requirements as determined by the United States Secret Service.

(f) Upon a determination in each specific case by the Secretary of State or the Secretary's designee that the purpose of the Foreign Service Buildings Act, 1926, can best be met on the basis of an in-kind exchange of properties with a foreign country pursuant to subsection (b)(5), the Secretary of State may transfer funds made available under the heading "Acquisition and Maintenance of Buildings Abroad" (including funds held in the Foreign Service Buildings Fund) for such purpose to the Working Capital Fund, as provided in section 208(h)(1). Except for funds that may be provided by a foreign government for the purchase of property, only funds transferred under the preceding sentence may be used for the purposes of subsection (b)(5).

(2) The Secretary of State may acquire property in the United States for the purposes of subsection (b)(5) only in the context of a specific reciprocal agreement with a specified foreign government. Property acquired by the United States in the foreign country through such an exchange shall benefit the United States at least to the same extent as the property acquired in the United States benefits the foreign government.

(3) The Secretary of State shall prescribe regulations for the implementation of any in-kind exchange of properties pursuant to subsection (b)(5).

(4) At least 15 days before entering into any reciprocal agreement for the exchange of property with another foreign government, the Secretary of State shall notify the Committee on Foreign Affairs and the Committee on Public Works and Transportation of the House of Representatives and the Committee on Foreign Relations of the Senate.

(5)(A) Proceeds from the disposition of properties acquired pursuant to this subsection shall be credited to the Foreign Service Buildings Fund (referred to in section 9 of the Foreign Service Buildings Act, 1926).

(B) The authority to spend proceeds received under subparagraph (A) may be exercised only to such extent or in such amounts as are provided in advance in an appropriation Act.

#### ENFORCEMENT OF COMPLIANCE WITH LIABILITY INSURANCE REQUIREMENTS

SEC. 204A. [22 U.S.C. 4303a] The head of a foreign mission shall notify promptly the Secretary of the lapse or termination of any liability insurance coverage held by a member of the mission, by a member of the family of such member, or by an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946.

(2) Not later than February 1 of each year, the head of each foreign mission shall prepare and transmit to the Secretary a report including a list of motor vehicles, vessels, and aircraft reg-

istered in the United States by members of the mission, members of the families of such members, individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, and by the mission itself. Such list shall set forth for each such motor vehicle, vessel, or aircraft—

- (A) the jurisdiction in which it is registered;
- (B) the name of insured;
- (C) the name of the insurance company;
- (D) the insurance policy number and the extent of insurance coverage; and
- (E) such other information as the Secretary may prescribe.

(b) Whenever the Secretary finds that a member of a foreign mission, a member of the family of such member, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946—

- (1) is at fault for personal injury, death, or property damage arising out of the operation of a motor vehicle, vessel, or aircraft in the United States,
- (2) is not covered by liability insurance, and
- (3) has not satisfied a court-rendered judgment against him or is not legally liable,

the Secretary shall impose a surcharge or fee on the foreign mission of which such member or individual is a part, amounting to the unsatisfied portion of the judgment rendered against such member or individual or, if there is no court-rendered judgment an estimated amount of damages incurred by the victim. The payment of any such surcharge or fee shall be available only for compensation of the victim or his estate.

(c) For purposes of this section—

- (1) the term “head of a foreign mission” has the same meaning as is ascribed to the term “head of a mission” in Article 1 of the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227); and
- (2) the terms “members of a mission” and “family” have the same meanings as is ascribed to them by paragraphs (1) and (2) of section 2 of the Diplomatic Relations Act (22 U.S.C. 254a).

**SEC. 204B. [22 U.S.C. 4303b] CRIMES COMMITTED BY DIPLOMATS.**

(a) ANNUAL REPORT CONCERNING DIPLOMATIC IMMUNITY.—

(1) REPORT TO CONGRESS.—The Secretary of State shall prepare and submit to the Congress, annually, a report concerning diplomatic immunity entitled “Report on Cases Involving Diplomatic Immunity”.

(2) CONTENT OF REPORT.—In addition to such other information as the Secretary of State may consider appropriate, the report under paragraph (1) shall include the following:

(A) The number of persons residing in the United States who enjoy full immunity from the criminal jurisdiction of the United States under laws extending diplomatic privileges and immunities.

(B) Each case involving an alien described in subparagraph (A) in which an appropriate authority of a State, a political subdivision of a State, or the United States re-

ported to the Department of State that the authority had reasonable cause to believe the alien committed a serious criminal offense within the United States, and any additional information provided to the Secretary relating to other serious criminal offenses that any such authority had reasonable cause to believe the alien committed before the period covered by the report. The Secretary may omit from such report any matter the provision of which the Secretary reasonably believes would compromise a criminal investigation or prosecution or which would directly compromise law enforcement or intelligence sources or methods.

(C) Each case described in subparagraph (B) in which the Secretary of State has certified that a person enjoys full immunity from the criminal jurisdiction of the United States under laws extending diplomatic privileges and immunities.

(D) The number of United States citizens who are residing in a receiving state and who enjoy full immunity from the criminal jurisdiction of such state under laws extending diplomatic privileges and immunities.

(E) Each case involving a United States citizen under subparagraph (D) in which the United States has been requested by the government of a receiving state to waive the immunity from criminal jurisdiction of the United States citizen.

(F) Whether the Secretary has made the notifications referred to in subsection (c) during the period covered by the report.

(3) SERIOUS CRIMINAL OFFENSE DEFINED.—For the purposes of this section, the term “serious criminal offense” means—

(A) any felony under Federal, State, or local law;

(B) any Federal, State, or local offense punishable by a term of imprisonment of more than 1 year;

(C) any crime of violence as defined for purposes of section 16 of title 18, United States Code; or

(D)(i) driving under the influence of alcohol or drugs;

(ii) reckless driving; or

(iii) driving while intoxicated.

(b) UNITED STATES POLICY CONCERNING REFORM OF DIPLOMATIC IMMUNITY.—It is the sense of the Congress that the Secretary of State should explore, in appropriate fora, whether states should enter into agreements and adopt legislation—

(1) to provide jurisdiction in the sending state to prosecute crimes committed in the receiving state by persons entitled to immunity from criminal jurisdiction under laws extending diplomatic privileges and immunities; and

(2) to provide that where there is probable cause to believe that an individual who is entitled to immunity from the criminal jurisdiction of the receiving state under laws extending diplomatic privileges and immunities committed a serious crime, the sending state will waive such immunity or the sending state will prosecute such individual.

(c) NOTIFICATION OF DIPLOMATIC CORPS.—The Secretary should periodically notify each foreign mission of United States policies relating to criminal offenses committed by individuals with immunity from the criminal jurisdiction of the United States under laws extending diplomatic privileges and immunities.

PROPERTY OF FOREIGN MISSIONS

SEC. 205. [22 U.S.C. 4305] (a)(1) The Secretary shall require any foreign mission, including any mission of an international organization (as defined in section 209(b)(2)), to notify the Secretary prior to any proposed acquisition, or any proposed sale or other disposition, of any real property by or on behalf of such mission. The foreign mission (or other party acting on behalf of the foreign mission) may initiate or execute any contract, proceeding, application, or other action required for the proposed action—

(A) only after the expiration of the 60-day period beginning on the date of such notification (or after the expiration of such shorter period as the Secretary may specify in a given case); and

(B) only if the mission is not notified by the Secretary within that period that the proposal has been disapproved; however, the Secretary may include in such a notification such terms and conditions as the Secretary may determine appropriate in order to remove the disapproval.

(2) For purposes of this section, “acquisition” includes any acquisition or alteration of, or addition to, any real property or any change in the purpose for which real property is used by a foreign mission.

(b) The Secretary may require any foreign mission to divest itself of, or forgo the use of, any real property determined by the Secretary—

(1) not to have been acquired in accordance with this section;

(2) to exceed limitations placed on real property available to a United States mission in the sending State; or

(3) where otherwise necessary to protect the interests of the United States.

(c) If a foreign mission has ceased conducting diplomatic, consular, and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission, the Secretary—

(1) until the designation of a protecting power or other agent approved by the Secretary, may protect and preserve any property of that foreign mission; and

(2) may dispose of such property at such time as the Secretary may determine after the expiration of the one-year period beginning on the date that the foreign mission ceased those activities, and may remit to the sending State the net proceeds from such disposition.

(d) (1) After the date of enactment of this subsection, real property in the United States may not be acquired (by sale, lease, or other means) by or on behalf of the foreign mission of a foreign

country described in paragraph (4) if, in the judgment of the Secretary of Defense (after consultation with the Secretary of State), the acquisition of that property might substantially improve the capability of that country to intercept communications involving United States Government diplomatic, military, or intelligence matters.

(2) After the date of enactment of this subsection, real property in the United States may not be acquired (by sale, lease, or other means) by or on behalf of the foreign mission of a foreign country described in paragraph (4) if, in the judgment of the Director of the Federal Bureau of Investigation (after consultation with the Secretary of State), the acquisition of that property might substantially improve the capability of that country to engage in intelligence activities directed against the United States Government, other than the intelligence activities described in paragraph (1).

(3) The Secretary of State shall inform the Secretary of Defense and the Director of the Federal Bureau of Investigation immediately upon notice being given pursuant to subsection (a) of this section of a proposed acquisition of real property by or on behalf of the foreign mission of a foreign country described in paragraph (4).

(4) For the purposes of this subsection, the term "foreign country" means—

(A) any country listed as a Communist country in section 620(f) of the Foreign Assistance Act of 1961;

(B) any country determined by the Secretary of State, for purposes of section 6(j) of the Export Administration Act of 1979, to be a country which has repeatedly provided support for acts of international terrorism; and

(C) any other country which engages in intelligence activities in the United States which are adverse to the national security interests of the United States.

(5) As used in this section, the term "substantially improve" shall not be construed to prevent the establishment of a foreign mission by a country which, on the date of enactment of this section—

(A) does not have a mission in the United States, or

(B) with respect to a city in the United States, did not maintain a mission in that city.

#### LOCATION OF FOREIGN MISSIONS IN THE DISTRICT OF COLUMBIA

SEC. 206. [22 U.S.C. 4306] (a) The location, replacement, or expansion of chanceries in the District of Columbia shall be subject to this section.

(b)(1) A chancery shall be permitted to locate as a matter of right in any area which is zoned commercial, industrial, waterfront, or mixed-use (CR).

(2) A chancery shall also be permitted to locate—

(A) in any area which is zoned medium-high or high density residential, and

(B) in any other area, determined on the basis of existing uses, which includes office or institutional uses, including but

not limited to any area zoned mixed-use diplomatic or special purpose, subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section.

(3) In each of the areas described in paragraphs (1) and (2), the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in that area.

(c)(1) If a foreign mission wishes to locate a chancery in an area described in subsection (b)(2), or wishes to appeal an administrative decision relating to a chancery based in whole or in part upon any zoning map or regulation, it shall file an application with the Board of Zoning Adjustment which shall publish notice of that application in the District of Columbia Register.

(2) Regulations issued to carry out this section shall provide appropriate opportunities for participation by the public in proceedings concerning the location, replacement, or expansion of chanceries.

(3) A final determination concerning the location, replacement, or expansion of a chancery shall be made not later than six months after the date of the filing of an application with respect to such location, replacement, or expansion. Such determination shall not be subject to the administrative proceedings of any other agency or official except as provided in this title.

(d) Any determination concerning the location of a chancery under subsection (b)(2), or concerning an appeal of an administrative decision with respect to a chancery based in whole or in part upon any zoning regulation or map, shall be based solely on the following criteria:

(1) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

(2) Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and Federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.

(3) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary, after consultation with Federal agencies authorized to perform protective services.

(4) The extent to which the area is capable of being adequately protected, as determined by the Secretary, after consultation with Federal agencies authorized to perform protective services.

(5) The municipal interest, as determined by the Mayor of the District of Columbia.

(6) The Federal interest, as determined by the Secretary.

(e)(1) Regulations, proceedings, and other actions of the National Capital Planning Commission, the Zoning Commission for the District of Columbia, and the Board of Zoning Adjustment af-

fecting the location, replacement, or expansion of chanceries shall be consistent with this section (including the criteria set out in subsection (d)) and shall reflect the policy of this title.

(2) Proposed actions of the Zoning Commission concerning implementation of this section shall be referred to the National Capital Planning Commission for review and comment.

(f) Regulations issued to carry out this section shall provide for proceedings of a rule-making and not of an adjudicatory nature.

(g) The Secretary shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the international obligations of the United States.

(h) Approval by the Board of Zoning Adjustment or the Zoning Commission or, except as provided in section 205, by any other agency or official is not required—

(1) for the location, replacement, or expansion of a chancery to the extent that authority to proceed, or rights or interests, with respect to such location, replacement, or expansion were granted to or otherwise acquired by the foreign mission before the effective date of this section; or

(2) for continuing use of a chancery by a foreign mission to the extent that the chancery was being used by a foreign mission on the effective date of this section.

(i)(1) The President may designate the Secretary of Defense, the Secretary of the Interior, or the Administrator of General Services (or such alternate as such official may from time to time designate) to serve as a member of the Zoning Commission in lieu of the Director of the National Park Service whenever the President determines that the Zoning Commission is performing functions concerning the implementation of this section.

(2) Whenever the Board of Zoning Adjustment is performing functions regarding an application by a foreign mission with respect to the location, expansion, or replacement of a chancery—

(A) the representative from the Zoning Commission shall be the Director of the National Park Service or if another person has been designated under paragraph (1) of this subsection, the person so designated; and

(B) the representative from the National Capital Planning Commission shall be the Executive Director of that Commission.

(j) Provisions of law (other than this title) applicable with respect to the location, replacement, or expansion of real property in the District of Columbia shall apply with respect to chanceries only to the extent that they are consistent with this section.

#### PREEMPTION

SEC. 207. [22 U.S.C. 4307] Notwithstanding any other law, no act of any Federal agency shall be effective to confer or deny any benefit with respect to any foreign mission contrary to this title. Nothing in section 202, 203, 204, or 205 may be construed to preempt any State or municipal law or governmental authority regarding zoning, land use, health, safety, or welfare, except that a denial by the Secretary involving a benefit for a foreign mission within

the jurisdiction of a particular State or local government shall be controlling.

GENERAL PROVISIONS

SEC. 208. [22 U.S.C. 4308] (a) The Secretary may issue such regulations as the Secretary may determine necessary to carry out the policy of this title.

(b) Compliance with any regulation, instruction, or direction issued by the Secretary under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court or administrative proceeding for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued by the Secretary under this title.

(c) For purposes of administering this title—

(1) the Secretary may accept details and assignments of employees of Federal agencies to the Department of State on a reimbursable or nonreimbursable basis (with any such reimbursements to be credited to the appropriations made available for the salaries and expenses of officers and employees of the employing agency); and

(2) the Secretary may, to the extent necessary to obtain services without delay, exercise his authority to employ experts and consultants under section 3109 of title 5, United States Code, without requiring compliance with such otherwise applicable requirements for that employment as the Secretary may determine, except that such employment shall be terminated after 60 days if by that time those requirements are not complied with.

(d) Contracts and subcontracts for supplies or services, including personal services, made by or on behalf of the Secretary shall be made after advertising, in such manner and at such times as the Secretary shall determine to be adequate to ensure notice and opportunity for competition, except that advertisement shall not be required when (1) the Secretary determines that it is impracticable or will not permit timely performance to obtain bids by advertising, or (2) the aggregate amount involved in a purchase of supplies or procurement of services does not exceed \$10,000. Such contracts and subcontracts may be entered into without regard to laws and regulations otherwise applicable to solicitation, negotiation, administration, and performance of government contracts. In awarding contracts, the Secretary may consider such factors as relative quality and availability of supplies or services and the compatibility of the supplies or services with implementation of this title.

(e) The head of any Federal agency may, for purposes of this title—

(1) transfer or loan any property to, and perform administrative and technical support functions and services for the operations of, the Department of State (with reimbursements to agencies under this paragraph to be credited to the current applicable appropriation of the agency concerned); and

(2) acquire and accept services from the Department of State, including (whenever the Secretary determines it to be in furtherance of the purposes of this title) acquisitions without regard to laws normally applicable to the acquisition of services by such agency.

(f) Assets of or under the control of the Department of State, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final.

(g) Except as otherwise provided, any determination required under this title shall be committed to the discretion of the Secretary.

(h)(1) In order to implement this title, the Secretary may transfer to the working capital fund established by section 13 of this Act such amounts available to the Department of State as may be necessary.

(2) All revenues, including proceeds from gifts and donations, received by the Secretary in carrying out this title may be credited to the working capital fund established by section 13 of this Act and shall be available for purposes of this title in accordance with that section.

(3) Only amounts transferred or credited to the working capital fund established by section 13 of this Act may be used in carrying out the functions of the Secretary or the Director under this title.

APPLICATION TO PUBLIC INTERNATIONAL ORGANIZATIONS AND  
OFFICIAL MISSIONS TO SUCH ORGANIZATIONS

SEC. 209. [22 U.S.C. 4309] (a) The Secretary may make section 206, or any other provision of this title, applicable with respect to an international organization to the same extent that it is applicable with respect to a foreign mission if the Secretary determines that such application is necessary to carry out the policy set forth in section 201(b) and to further the objectives set forth in section 204(b).

(b) For purposes of this section, "international organization" means—

(1) a public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. 288—288f-2) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs; and

(2) an official mission (other than a United States mission) to such a public international organization, including any real property of such an organization or mission and including the personnel of such an organization or mission.

UNITED STATES RESPONSIBILITIES FOR EMPLOYEES OF THE UNITED  
NATIONS

SEC. 209A. [22 U.S.C. 4309a] (a) FINDINGS.—The Congress finds that—

(1) pursuant to the Agreement Between the United States and the United Nations Regarding the Headquarters of the United Nations (authorized by Public Law 80-357 (22 U.S.C. 287 note)), the United States has accepted—

(A) the obligation to permit and to facilitate the right of individuals, who are employed by or are authorized by the United Nations to conduct official business in connection with that organization or its agencies, to enter into and exit from the United States for purposes of conducting official activities within the United Nations Headquarters District, subject to regulation as to points of entry and departure; and

(B) the implied obligation to permit and to facilitate the acquisition of facilities in order to conduct such activities within or in proximity to the United Nations Headquarters District, subject to reasonable regulation including regulation of the location and size of such facilities; and

(2) taking into account paragraph (1) and consistent with the obligation of the United States to facilitate the functioning of the United Nations, the United States has no additional obligation to permit the conduct of any other activities, including nonofficial activities, by such individuals outside of the United Nations Headquarters District.

(b) **ACTIVITIES OF UNITED NATIONS EMPLOYEES.**—(1) The conduct of any activities, or the acquisition of any benefits (as defined in section 201(a)(1) of this title), outside the United Nations Headquarters District by any individual employed by, or authorized by the United Nations to conduct official business in connection with that organization or its agencies, or by any person or agency acting on behalf thereof, may be permitted or denied or subject to reasonable regulation, as determined to be in the best interest of the United States and pursuant to this title.

(c) **REPORTS.**—The Secretary shall report to the Congress—

(1) not later than 30 days after the date of the enactment of this section, on the plans of the Secretary for implementing this section; and

(2) not later than 6 months thereafter, on the actions taken pursuant to those plans.

(d) **UNITED STATES NATIONALS.**—This section shall not apply with respect to any United States national.

(e) **DEFINITIONS.**—For purposes of this section, the term “United Nations Headquarters District” means the area within the United States which is agreed to by the United Nations and the United States to constitute such a district, together with such other areas as the Secretary of State may approve from time to time in order to permit effective functioning of the United Nations or missions to the United Nations.

#### PRIVILEGES AND IMMUNITIES

**SEC. 210. [22 U.S.C. 4310]** Nothing in this title shall be construed to limit the authority of the United States to carry out its international obligations, or to supersede or limit immunities other-

wise available by law. No act or omission by any foreign mission, public international organization, or official mission to such an organization, in compliance with this title shall be deemed to be an implied waiver of any immunity otherwise provided for by law.

#### ENFORCEMENT

**SEC. 211. [22 U.S.C. 4311]** (a) It shall be unlawful for any person to make available any benefits to a foreign mission contrary to this title. The United States, acting on its own behalf or on behalf of a foreign mission, has standing to bring or intervene in an action to obtain compliance with this title, including any action for injunctive or other equitable relief.

(b) Upon the request of any Federal agency, any State or local government agency, or any business or other person that proposes to enter into a contract or other transaction with a foreign mission, the Secretary shall advise whether the proposed transaction is prohibited by any regulation or determination of the Secretary under this title.

#### PRESIDENTIAL GUIDELINES

**SEC. 212. [22 U.S.C. 4312]** The authorities granted to the Secretary pursuant to the provisions of this title shall be exercised in accordance with procedures and guidelines approved by the President.

#### SEVERABILITY

**SEC. 213. [22 U.S.C. 4313]** If any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to any other person or circumstance shall not be affected thereby.

#### EXTRAORDINARY PROTECTIVE SERVICES

**SEC. 214. [22 U.S.C. 4314]** (a) **GENERAL AUTHORITY.**—The Secretary may provide extraordinary protective services for foreign missions directly, by contract, or through State or local authority to the extent deemed necessary by the Secretary in carrying out this title, except that the Secretary may not provide under this section any protective services for which authority exists to provide such services under sections 202(7)<sup>1</sup> and 208 of title 3, United States Code.

(b) **REQUIREMENT OF EXTRAORDINARY CIRCUMSTANCES.**—The Secretary may provide funds to a State or local authority for protective services under this section only if the Secretary has determined that a threat of violence, or other circumstances, exists which requires extraordinary security measures which exceed those which local law enforcement agencies can reasonably be expected to take.

(c) Repealed.

(d) **RESTRICTIONS ON USE OF FUNDS.**—Of the funds made available for obligation under this section in any fiscal year—

<sup>1</sup> Reference to 202(7) of title 3, United States Code, probably should be to 202(8) of such title.

(1) not more than 20 percent may be obligated for protective services within any single State during that year; and

(2) not less than 15 percent shall be retained as a reserve for protective services provided directly by the Secretary or for expenditures in local jurisdictions not otherwise covered by an agreement for protective services under this section.

The limitations on funds available for obligation in this subsection shall not apply to unobligated funds during the final quarter of any fiscal year.

(e) PERIOD OF AGREEMENT WITH STATE OR LOCAL AUTHORITY.—Any agreement with a State or local authority for the provision of protective services under this section shall be for a period of not to exceed 90 days in any calendar year, but such agreements may be renewed after review by the Secretary.

(f) REQUIREMENT FOR APPROPRIATIONS.—Contracts may be entered into in carrying out this section only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) WORKING CAPITAL FUND.—Amounts used to carry out this section shall not be subject to section 208(h).

USE OF FOREIGN MISSION IN A MANNER INCOMPATIBLE WITH ITS  
STATUS AS A FOREIGN MISSION

SEC. 215. [22 U.S.C. 4315] (a) ESTABLISHMENT OF LIMITATION ON CERTAIN USES.—A foreign mission may not allow an unaffiliated alien the use of any premise of that foreign mission which is inviolable under United States law (including any treaty) for any purpose which is incompatible with its status as a foreign mission, including use as a residence.

(b) TEMPORARY LODGING.—For the purposes of this section, the term “residence” does not include such temporary lodging as may be permitted under regulations issued by the Secretary.

(c) WAIVER.—The Secretary may waive subsection (a) with respect to all foreign missions of a country (and may revoke such a waiver) 30 days after providing written notification of such a waiver, together with the reasons for such waiver (or revocation of such a waiver), to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(d) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall submit a report to the Congress concerning the implementation of this section and shall submit such other reports to the Congress concerning changes in implementation as may be necessary.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term “foreign mission” includes any international organization as defined in section 209(b); and

(2) the term “unaffiliated alien” means, with respect to a foreign country, an alien who—

(A) is admitted to the United States as a non-immigrant, and

(B) is not a member, or a family member of a member, of a foreign mission of that foreign country.

## APPLICATION OF TRAVEL RESTRICTIONS TO PERSONNEL OF CERTAIN COUNTRIES AND ORGANIZATIONS

SEC. 216. [22 U.S.C. 4316] (a) REQUIREMENT FOR RESTRICTIONS.—The Secretary shall apply the same generally applicable restrictions to the travel while in the United States of the individuals described in subsection (b) as are applied under this title to the members of the missions of the Soviet Union in the United States.

(b) INDIVIDUALS SUBJECT TO RESTRICTIONS.—The restrictions required by subsection (a) shall be applied with respect to those individuals who (as determined by the Secretary) are—

(1) the personnel of an international organization, if the individual is a national of any foreign country whose government engages in intelligence activities in the United States that are harmful to the national security of the United States;

(2) the personnel of a mission to an international organization, if that mission is the mission of a foreign government that engages in intelligence activities in the United States that are harmful to the national security of the United States; or

(3) the family members or dependents of an individual described in paragraphs (1) and (2);

and who are not nationals or permanent resident aliens of the United States.

(c) WAIVERS.—The Secretary, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, may waive application of the restrictions required by subsection (a) if the Secretary determines that the national security and foreign policy interests of the United States so require.

(e) DEFINITIONS.—For purposes of this section—

(1) the term “generally applicable restrictions” means any limitations on the radius within which unrestricted travel is permitted and obtaining travel services through the auspices of the Office of Foreign Missions for travel elsewhere, and does not include any restrictions which unconditionally prohibit the members of missions of the Soviet Union in the United States from traveling to designated areas of the United States and which are applied as a result of particular factors in relations between the United States and the Soviet Union.

(2) the term “international organization” means an organization described in section 209(b)(1); and

(3) the term “personnel” includes—

(A) officers, employees, and any other staff member, and

(B) any individual who is retained under contract or other arrangement to serve functions similar to those of an officer, employee, or other staff member.

**SECTION 1385 OF TITLE 18, UNITED STATES CODE  
(THE "POSSE COMITATUS ACT")**

**§ 1385. Use of Army and Air Force as posse comitatus**

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

**CHAPTERS 8, 18, 141, AND 148 OF TITLE 10, UNITED STATES CODE (CONSULTATION REGARDING APPOINTMENT OF CERTAIN INTELLIGENCE OFFICIALS; MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS)**

**CHAPTER 8—DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES**

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**SUBCHAPTER II—MISCELLANEOUS DEFENSE AGENCY MATTERS**

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**§ 201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance**

(a) CONSULTATION REGARDING APPOINTMENT.—Before submitting a recommendation to the President regarding the appointment of an individual to the position of Director of the Defense Intelligence Agency, the Secretary of Defense shall consult with the Director of Central Intelligence regarding the recommendation.

(b) CONCURRENCE IN APPOINTMENT.—(1) Before submitting a recommendation to the President regarding the appointment of an individual to a position referred to in paragraph (2), the Secretary of Defense shall seek the concurrence of the Director of Central Intelligence in the recommendation. If the Director does not concur in the recommendation, the Secretary may make the recommendation to the President without the Director's concurrence, but shall include in the recommendation a statement that the Director does not concur in the recommendation.

(2) Paragraph (1) applies to the following positions:

- (A) The Director of the National Security Agency.
- (B) The Director of the National Reconnaissance Office.

<sup>1</sup> Section 923 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102-190, 105 Stat. 1453) provides:

**SEC. 923. JOINT INTELLIGENCE CENTER.**

(a) REQUIREMENT FOR CENTER.—The Secretary of Defense shall direct the consolidation of existing single-service current intelligence centers that are located within the District of Columbia or its vicinity into a joint intelligence center that is responsible for preparing current intelligence assessments (including indications and warning). The joint intelligence center shall be located within the District of Columbia or its vicinity. As appropriate for the support of military operations, the joint intelligence center shall provide for and manage the collection and analysis of intelligence.

(b) MANAGEMENT.—The center shall be managed by the Defense Intelligence Agency in its capacity as the intelligence staff activity of the Chairman of the Joint Chiefs of Staff.

(c) RESPONSIVENESS TO COMMAND AUTHORITIES.—The Secretary shall ensure that the center is fully responsive to the intelligence needs of the Secretary, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.

(C) The Director of the National Imagery and Mapping Agency.

(c) PERFORMANCE EVALUATIONS.—(1) The Director of Central Intelligence shall provide annually to the Secretary of Defense, for the Secretary's consideration, an evaluation of the performance of the individuals holding the positions referred to in paragraph (2) in fulfilling their respective responsibilities with regard to the National Foreign Intelligence Program.

(2) The positions referred to in paragraph (1) are the following:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Imagery and Mapping Agency.

\* \* \* \* \*

## CHAPTER 18—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES

- Sec.  
 371. Use of information collected during military operations.  
 372. Use of military equipment and facilities.  
 373. Training and advising civilian law enforcement officials.  
 374. Maintenance and operation of equipment.  
 375. Restriction on direct participation by military personnel.  
 376. Support not to affect adversely military preparedness.  
 377. Reimbursement.  
 378. Nonpreemption of other law.  
 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes.  
 380. Enhancement of cooperation with civilian law enforcement officials.  
 381. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense.  
 382. Emergency situations involving chemical or biological weapons of mass destruction.

### § 371. Use of information collected during military operations

(a) The Secretary of Defense may in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

(b) The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be taken into account in the planning and execution of military training or operations.

(c) The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the Department of Defense and relevant to drug interdiction or other civilian law enforcement matters is provided promptly to appropriate civilian law enforcement officials.

### § 372. Use of military equipment and facilities

(a) IN GENERAL.—The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research fa-

cility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

(b) EMERGENCIES INVOLVING CHEMICAL AND BIOLOGICAL AGENTS.—(1) In addition to equipment and facilities described in subsection (a), the Secretary may provide an item referred to in paragraph (2) to a Federal, State, or local law enforcement or emergency response agency to prepare for or respond to an emergency involving chemical or biological agents if the Secretary determines that the item is not reasonably available from another source. The requirement for a determination that an item is not reasonably available from another source does not apply to assistance provided under section 382 of this title pursuant to a request of the Attorney General for the assistance.

(2) An item referred to in paragraph (1) is any material or expertise of the Department of Defense appropriate for use in preparing for or responding to an emergency involving chemical or biological agents, including the following:

- (A) Training facilities.
- (B) Sensors.
- (C) Protective clothing.
- (D) Antidotes.

### **§ 373. Training and advising civilian law enforcement officials**

The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available—

(1) to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment, including equipment made available under section 372 of this title; and

(2) to provide such law enforcement officials with expert advice relevant to the purposes of this chapter.

### **§ 374. Maintenance and operation of equipment <sup>1</sup>**

(a) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available for the maintenance of equipment for Federal, State, and local civilian law enforcement officials, including equipment made available under section 372 of this title.

(b)(1) Subject to paragraph (2) and in accordance with other applicable law, the Secretary of Defense may, upon request from the head of a Federal law enforcement agency, make Department of Defense personnel available to operate equipment (including equipment made available under section 372 of this title) with respect to—

(A) a criminal violation of a provision of law specified in paragraph (4)(A);

<sup>1</sup> Section 8080(a) of the Department of Defense Appropriations Act, 1997 (as contained in sec. 101(b) of P.L. 104-208, provides:

SEC. 8080. (a) None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

- (B) assistance that such agency is authorized to furnish to a State, local, or foreign government which is involved in the enforcement of similar laws;
  - (C) a foreign or domestic counter-terrorism operation; or
  - (D) a rendition of a suspected terrorist from a foreign country to the United States to stand trial.
- (2) Department of Defense personnel made available to a civilian law enforcement agency under this subsection may operate equipment for the following purposes:
- (A) Detection, monitoring, and communication of the movement of air and sea traffic.
  - (B) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.
  - (C) Aerial reconnaissance.
  - (D) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.
  - (E) Operation of equipment to facilitate communications in connection with law enforcement programs specified in paragraph (4)(A).
  - (F) Subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States)—
    - (i) the transportation of civilian law enforcement personnel along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel;
    - (ii) the operation of a base of operations for civilian law enforcement and supporting personnel; and
    - (iii) the transportation of suspected terrorists from foreign countries to the United States for trial (so long as the requesting Federal law enforcement agency provides all security for such transportation and maintains custody over the suspect through the duration of the transportation).
- (3) Department of Defense personnel made available to operate equipment for the purpose stated in paragraph (2)(D) may continue to operate such equipment into the land area of the United States in cases involving the pursuit of vessels or aircraft where the detection began outside such land area.
- (4) In this subsection:
- (A) The term “Federal law enforcement agency” means a Federal agency with jurisdiction to enforce any of the following:
    - (i) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).
    - (ii) Any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328).

(iii) A law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) into or out of the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedules of the United States) or any other territory or possession of the United States.

(iv) The Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(v) Any law, foreign or domestic, prohibiting terrorist activities.

(B) The term “land area of the United States” includes the land area of any territory, commonwealth, or possession of the United States.

(c) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in subsection (b)(2) only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law.

#### **§ 375. Restriction on direct participation by military personnel**

The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

#### **§ 376. Support not to affect adversely military preparedness**

Support (including the provision of any equipment or facility or the assignment or detail of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such support will adversely affect the military preparedness of the United States. The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that the provision of any such support does not adversely affect the military preparedness of the United States.

#### **§ 377. Reimbursement**

(a) To the extent otherwise required by section 1535 of title 31 (popularly known as the “Economy Act”) or other applicable law, the Secretary of Defense shall require a civilian law enforcement agency to which support is provided under this chapter to reimburse the Department of Defense for that support.

(b) An agency to which support is provided under this chapter is not required to reimburse the Department of Defense for such support if such support—

(1) is provided in the normal course of military training or operations; or

(2) results in a benefit to the element of the Department of Defense providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

**§ 378. Nonpreemption of other law**

Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law before December 1, 1981.

**§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes**

(a) The Secretary of Defense and the Secretary of Homeland Security shall provide that there be assigned on board every appropriate surface naval vessel at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

(1) as may be agreed upon by the Secretary of Defense and the Secretary of Homeland Security; and

(2) as are otherwise within the jurisdiction of the Coast Guard.

(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Homeland Security, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such personnel may be assigned other duty involving enforcement of laws listed in section 374(b)(4)(A) of this title.

(d) In this section, the term “drug-interdiction area” means an area outside the land area of the United States (as defined in section 374(b)(4)(B) of this title) in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.

**§ 380. Enhancement of cooperation with civilian law enforcement officials**

(a) The Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each State (including law enforcement personnel of the political subdivisions of each State) regarding information, training, technical support, and equipment and facilities available to civilian law enforcement personnel from the Department of Defense.

(b) Each briefing conducted under subsection (a) shall include the following:

(1) An explanation of the procedures for civilian law enforcement officials—

(A) to obtain information, equipment, training, expert advice, and other personnel support under this chapter; and

(B) to obtain surplus military equipment.

(2) A description of the types of information, equipment and facilities, and training and advice available to civilian law enforcement officials from the Department of Defense.

(3) A current, comprehensive list of military equipment which is suitable for law enforcement officials from the Department of Defense or available as surplus property from the Administrator of General Services.

(c) The Attorney General and the Administrator of General Services shall—

(1) establish or designate an appropriate office or offices to maintain the list described in subsection (b)(3) and to furnish information to civilian law enforcement officials on the availability of surplus military equipment; and

(2) make available to civilian law enforcement personnel nationwide, tollfree telephone communication with such office or offices.

**§ 381. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense**

(a) PROCEDURES.—(1) The Secretary of Defense shall establish procedures in accordance with this subsection under which States and units of local government may purchase law enforcement equipment suitable for counter-drug activities through the Department of Defense. The procedures shall require the following:

(A) Each State desiring to participate in a procurement of equipment suitable for counter-drug activities through the Department of Defense shall submit to the Department, in such form and manner and at such times as the Secretary prescribes, the following:

(i) A request for law enforcement equipment.

(ii) Advance payment for such equipment, in an amount determined by the Secretary based on estimated or actual costs of the equipment and administrative costs incurred by the Department.

(B) A State may include in a request submitted under subparagraph (A) only the type of equipment listed in the catalog produced under subsection (c).

(C) A request for law enforcement equipment shall consist of an enumeration of the law enforcement equipment that is desired by the State and units of local government within the State. The Governor of a State may establish such procedures as the Governor considers appropriate for administering and coordinating requests for law enforcement equipment from units of local government within the State.

(D) A State requesting law enforcement equipment shall be responsible for arranging and paying for shipment of the equipment to the State and localities within the State.

(2) In establishing the procedures, the Secretary of Defense shall coordinate with the General Services Administration and other Federal agencies for purposes of avoiding duplication of effort.

(b) REIMBURSEMENT OF ADMINISTRATIVE COSTS.—In the case of any purchase made by a State or unit of local government under the procedures established under subsection (a), the Secretary of Defense shall require the State or unit of local government to reimburse the Department of Defense for the administrative costs to the Department of such purchase.

(c) GSA CATALOG.—The Administrator of General Services, in coordination with the Secretary of Defense, shall produce and maintain a catalog of law enforcement equipment suitable for counter-drug activities for purchase by States and units of local government under the procedures established by the Secretary under this section.

(d) DEFINITIONS.—In this section:

(1) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(2) The term “unit of local government” means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

(3) The term “law enforcement equipment suitable for counter-drug activities” has the meaning given such term in regulations prescribed by the Secretary of Defense. In prescribing the meaning of the term, the Secretary may not include any equipment that the Department of Defense does not procure for its own purposes.

### **§ 382. Emergency situations involving chemical or biological weapons of mass destruction**

(a) IN GENERAL.—The Secretary of Defense, upon the request of the Attorney General, may provide assistance in support of Department of Justice activities relating to the enforcement of section 175 or 2332c of title 18 during an emergency situation involving a biological or chemical weapon of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

(1) the Secretary of Defense and the Attorney General jointly determine that an emergency situation exists; and

(2) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

(b) EMERGENCY SITUATIONS COVERED.—In this section, the term “emergency situation involving a biological or chemical weapon of mass destruction” means a circumstance involving a biological or chemical weapon of mass destruction—

(1) that poses a serious threat to the interests of the United States; and

(2) in which—

(A) civilian expertise and capabilities are not readily available to provide the required assistance to counter the threat immediately posed by the weapon involved;

(B) special capabilities and expertise of the Department of Defense are necessary and critical to counter the threat posed by the weapon involved; and

(C) enforcement of section 175 or 2332c of title 18 would be seriously impaired if the Department of Defense assistance were not provided.

(c) FORMS OF ASSISTANCE.—The assistance referred to in subsection (a) includes the operation of equipment (including equipment made available under section 372 of this title) to monitor, contain, disable, or dispose of the weapon involved or elements of the weapon.

(d) REGULATIONS.—(1) The Secretary of Defense and the Attorney General shall jointly prescribe regulations concerning the types of assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section.

(2)(A) Except as provided in subparagraph (B), the regulations may not authorize the following actions:

(i) Arrest.

(ii) Any direct participation in conducting a search for or seizure of evidence related to a violation of section 175 or 2332c of title 18.

(iii) Any direct participation in the collection of intelligence for law enforcement purposes.

(B) The regulations may authorize an action described in subparagraph (A) to be taken under the following conditions:

(i) The action is considered necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking the action.

(ii) The action is otherwise authorized under subsection (c) or under otherwise applicable law.

(e) REIMBURSEMENTS.—The Secretary of Defense shall require reimbursement as a condition for providing assistance under this section to the extent required under section 377 of this title.

(f) DELEGATIONS OF AUTHORITY.—(1) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this section. The Secretary of Defense may delegate the Secretary's authority under this section only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.

(2) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this section. The Attorney General may delegate that authority only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has

been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

(g) RELATIONSHIP TO OTHER AUTHORITY.—Nothing in this section shall be construed to restrict any executive branch authority regarding use of members of the armed forces or equipment of the Department of Defense that was in effect before September 23, 1996.

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### CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

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#### § 2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel

(a) POLICY.—Under section 3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2402(5)(A)), it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States person.

(b) PROHIBITION.—(1) Consistent with the policy referred to in subsection (a), the Department of Defense may not award a contract for an amount in excess of the small purchase threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))) to a foreign entity unless that entity certifies to the Secretary of Defense that it does not comply with the secondary Arab boycott of Israel.

(2) In paragraph (1), the term foreign entity” means a foreign person, a foreign company, or any other foreign entity.

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the prohibition in subsection (b) in specific instances when the Secretary determines that the waiver is necessary in the national security interests of the United States. Within 15 days after the end of each fiscal year, the Secretary shall submit to Congress a report identifying each contract for which a waiver was granted under this subsection during that fiscal year.

(d) EXCEPTIONS.—Subsection (b) does not apply—

(1) to contracts for consumable supplies, provisions, or services that are intended to be used for the support of United States forces or of allied forces in a foreign country; or

(2) to contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes by the United States Government in the interests of national security or to the acquisition or lease of any such equipment, technology, data, or services by the United States Government in the interests of national security.

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**CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION**

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**SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS**

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**§ 2537. Improved national defense control of technology diversions overseas**

(a) **COLLECTION OF INFORMATION ON FOREIGN-CONTROLLED CONTRACTORS.**—The Secretary of Defense and the Secretary of Energy shall each collect and maintain a data base containing a list of, and other pertinent information on, all contractors with the Department of Defense and the Department of Energy, respectively, that are controlled by foreign persons. The data base shall contain information on such contractors for 1988 and thereafter in all cases where they are awarded contracts exceeding \$10,000,000 in any single year by the Department of Defense or the Department of Energy.

(b) **ANNUAL REPORT TO CONGRESS.**—The Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce shall submit to the Congress, by March 31 of each year, beginning in 1994, a report containing a summary and analysis of the information collected under subsection (a) for the year covered by the report. The report shall include an analysis of accumulated foreign ownership of United States firms engaged in the development of defense critical technologies.

(c) **TECHNOLOGY RISK ASSESSMENT REQUIREMENT.**—(1) If the Secretary of Defense is acting as a designee of the President under section 721(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(a)) and if the Secretary determines that a proposed or pending merger, acquisition, or takeover may involve a firm engaged in the development of a defense critical technology or is otherwise important to the defense industrial and technology base, then the Secretary shall require the appropriate entity or entities from the list set forth in paragraph (2) to conduct an assessment of the risk of diversion of defense critical technology posed by such proposed or pending action.

- (2) The entities referred to in paragraph (1) are the following:
  - (A) The Defense Intelligence Agency.
  - (B) The Army Foreign Technology Science Center.
  - (C) The Naval Maritime Intelligence Center.
  - (D) The Air Force Foreign Aerospace Science and Technology Center.

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**SECTION 1101 OF PUBLIC LAW 90-351 (TENURE AND  
SENATE CONFIRMATION OF FBI DIRECTOR)**

SEC. 1101. [28 U.S.C. 532 nt] (a) Effective as of the day following the date on which the present incumbent in the office of Director ceases to serve as such, the Director of the Federal Bureau of Investigation shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate prescribed for level II of the Federal Executive Salary Schedule [section 5313 of Title 5, Government Organization and Employees].

(b) Effective with respect to any individual appointment by the President, by and with the advice and consent of the Senate, after June 1, 1973, the term of service of the Director of the Federal Bureau of Investigation shall be ten years. A Director may not serve more than one ten-year term. The provisions of subsections (a) through (c) of section 8335 of title 5, United States Code, shall apply to any individuals appointed under this section.

**SECTION 203(b) OF PUBLIC LAW 98-411 (FBI  
UNDERCOVER OPERATIONS)**

GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

SEC. 203. (a) \* \* \*

(b)(1) With respect to any undercover investigative operation of the Federal Bureau of Investigation or the Drug Enforcement Administration which is necessary for the detection and prosecution of crimes against the United States or for the collection of foreign intelligence or counterintelligence—

(A) sums authorized to be appropriated for the Federal Bureau of Investigation and for the Drug Enforcement Administration, for fiscal year 1985, may be used for purchasing property, buildings, and other facilities, and for leasing space, within the United States, the District of Columbia, and the territories and possessions of the United States, without regard to section 1341 of title 31 of the United States Code, section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)), section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255), the third undesignated paragraph under the heading "Miscellaneous" of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), section 3324 of title 31 of the United States Code, section 3741 of the Revised Statutes (41 U.S.C. 22), and subsections (a) and (c) of section 304 of the Federal Property and Administrative Service Act of 1949 (63 Stat. 395; 41 U.S.C. 254 (a) and (c)),

(B) sums authorized to be appropriated for the Federal Bureau of Investigation and for the Drug Enforcement Administration, for fiscal year 1985, may be used to establish or to acquire proprietary corporations or business entities as part of an undercover investigative operation, and to operate such corporations or business entities on a commercial basis, without regard to section 9102 of title 31 of the United States Code,

(C) sums authorized to be appropriated for the Federal Bureau of Investigation and for the Drug Enforcement Administration, for fiscal year 1985, and the proceeds from such undercover operation, may be deposited in banks or other financial institutions, without regard to section 648 of title 18 of the United States Code and section 3302 of title 31 of the United States Code, and

(D) proceeds from such undercover operation may be used to offset necessary and reasonable expenses incurred in such operation, without regard to section 3302 of title 31 of the United States Code,

only, in operations designed to detect and prosecute crimes against the United States, upon the written certification of the Director of the Federal Bureau of Investigation (or, if designated by the Direc-

tor, a member of the Undercover Operations Review Committee established by the Attorney General in the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, as in effect on July 1, 1983), or the Administrator of the Drug Enforcement Administration, as the case may be, and the Attorney General (or with respect to Federal Bureau of Investigation undercover operations, if designated by the Attorney General, a member of such Review Committee), that any action authorized by subparagraph (A), (B), (C), or (D), is necessary for the conduct of such undercover operation. If the undercover operation is designed to collect foreign intelligence or counterintelligence, the certification that any action authorized by subparagraph (A), (B), (C), or (D) is necessary for the conduct of such undercover operation shall be by the Director of the Federal Bureau of Investigation (or, if designated by the Director, the Assistant Director, Intelligence Division) and the Attorney General (or, if designated by the Attorney General, the Counsel for Intelligence Policy). Such certification shall continue in effect for the duration of such undercover operation, without regard to fiscal years.

(2) As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under subparagraphs (C) and (D) of subsection (a) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited in the Treasury of the United States as miscellaneous receipts.

(3) If a corporation or business entity established or acquired as part of an undercover operation under subparagraph (B) of paragraph (1) with a net value of over \$50,000 is to be liquidated, sold, or otherwise disposed of, the Federal Bureau of Investigation or the Drug Enforcement Administration, as much in advance as the Director or the Administrator, or the designee of the Director or the Administrator, determines is practicable, shall report the circumstances to the Attorney General and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(4)(A) The Federal Bureau of Investigation or the Drug Enforcement Administration, as the case may be, shall conduct a detailed financial audit of each undercover investigative operation which is closed in fiscal year 1985,

(i) submit the results of such audit in writing to the Attorney General, and

(ii) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(B) The Federal Bureau of Investigation and the Drug Enforcement Administration shall each also submit a report annually to the Congress specifying as to their respective undercover investigative operations—

(i) the number, by programs, of undercover investigative operations pending as of the end of the one-year period for which such report is submitted,

(ii) the number, by programs, of undercover investigative operations commenced in the one-year period preceding the period for which such report is submitted, and

(iii) the number, by programs, of undercover investigative operations closed in the one-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained. With respect to each such closed undercover operation which involves any of the sensitive circumstances specified in the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, such report shall contain a detailed description of the operation and related matters, including information pertaining to—

(I) the results,

(II) any civil claims, and

(III) identification of such sensitive circumstances involved, that arose at any time during the course of such undercover operation.

(5) For purposes of paragraph (4)—

(A) the term “closed” refers to the earliest point in time at which—

(I) all criminal proceedings (other than appeals) are concluded, or

(II) covert activities are concluded, whichever occurs later,

(B) the term “employees” means employees, as defined in section 2105 of title 5 of the United States Code, of the Federal Bureau of Investigation, and

(C) the terms “undercover investigative operation” and “undercover operation” mean any undercover investigative operation of the Federal Bureau of Investigation or the Drug Enforcement Administration (other than a foreign counterintelligence undercover investigative operation)—

(i) in which—

(I) the gross receipts (excluding interest earned) exceed \$50,000, or

(II) expenditures (other than expenditures for salaries of employees) exceed \$150,000, and

(ii) which is exempt from section 3302 or 9102 of title 31 of the United States Code,

except that clauses (i) and (ii) shall not apply with respect to the report required under subparagraph (B) of such paragraph.

**SECTION 1121 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989 (POLYGRAPH PROGRAM)**

**SEC. 1121. [10 U.S.C. 113 nt] COUNTERINTELLIGENCE POLYGRAPH PROGRAM**

(a) **AUTHORITY FOR PROGRAM.**—The Secretary of Defense may carry out a program for the administration of counterintelligence polygraph examinations to persons described in subsection (b). The program shall be based on Department of Defense Directive 5210.48, dated December 24, 1984.

(b) **PERSONS COVERED.**—Except as provided in subsection (d), the following persons whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2(a) of Executive Order 12356 (or a successor Executive order) are subject to this section:

(1) Military and civilian personnel of the Department of Defense.

(2) Personnel of defense contractors.

(c) **LIMITATION ON NUMBER OF EXAMINATIONS.**—The number of counterintelligence polygraph examinations that may be administered under this section may not exceed 5,000 during any fiscal year for which a specific number is not otherwise provided by law.

(d) **EXCEPTIONS FROM COVERAGE FOR CERTAIN INTELLIGENCE AGENCIES AND FUNCTIONS.**—This section does not apply—

(1) to a person assigned or detailed to the Central Intelligence Agency or to an expert or consultant under a contract with the Central Intelligence Agency;

(2) to (A) a person employed by or assigned or detailed to the National Security Agency, (B) an expert or consultant under contract to the National Security Agency, (C) an employee of a contractor of the National Security Agency, or (D) a person applying for a position in the National Security Agency;

(3) to a person assigned to a space where sensitive cryptographic information is produced, processed, or stored; or

(4) to a person employed by, or assigned or detailed to, an office within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs or a contractor of such an office.

(e) **POLYGRAPH RESEARCH PROGRAM.**—The Secretary of Defense shall carry out a continuing research program to support the polygraph activities of the Department of Defense. The program shall include—

(1) an on-going evaluation of the validity of polygraph techniques used by the Department;

(2) research on polygraph countermeasures and anti-countermeasures; and

(3) developmental research on polygraph techniques, instrumentation, and analytic methods.

(f) ANNUAL REPORT ON POLYGRAPH PROGRAMS.—(1) Not later than January 15 of each year, the Secretary of Defense shall submit to Congress a report on polygraph examinations administered by or for the Department of Defense during the previous fiscal year (whether administered under this section or any other authority).

(2) Each such report shall include the following with regard to the program authorized by subsection (a):

(A) A statement of the number of polygraph examinations administered by or for the Department of Defense during such fiscal year.

(B) A description of the purposes and results of such examinations.

(C) A description of the criteria used for selecting programs and persons for such examination.

(D) A statement of the number of persons who refused to submit to such an examination and a description of the actions taken as a result of the refusals.

(E) A statement of the number of persons for which such an examination indicated deception and the action taken as a result of the examinations.

(F) A detailed accounting of those cases in which more than two such examinations were needed to attempt to resolve discrepancies and those cases in which the examination of a person extended over more than one day.

(3) Each such report shall also include the following:

(A) A description of any plans to expand the use of polygraph examinations in the Department of Defense.

(B) A discussion of any plans of the Secretary for recruiting and training additional polygraph operators together with statistical data on the employment turnover of Department of Defense polygraph operators.

(C) A description of the results during the preceding fiscal year of the research program under subsection (e).

(D) A statement of the number of polygraph examinations administered to persons described in subsection (d) (which number may be set forth in a classified annex to the report).

(g) REPEAL.—Section 1221 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 726), is repealed.

(h) EFFECTIVE DATE.—This section shall take effect as of October 1, 1987.

**SECTION 1114 OF TITLE 18, UNITED STATES CODE  
(ASSAULT ON INTELLIGENCE OFFICERS)**

**§1114. Protection of officers and employees of the United States**

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished—

- (1) in the case of murder, as provided under section 1111;
- (2) in the case of manslaughter, as provided under section 1112; or
- (3) in the case of attempted murder or manslaughter, as provided in section 1113.

**FOREIGN RELATIONS AND AUTHORIZATION ACT,  
FISCAL YEARS 1988 AND 1989**

(Public Law 100-204; 101 Stat. 1331; approved December 22, 1987)

**TITLE I—THE DEPARTMENT OF STATE**

\* \* \* \* \*

**PART C—DIPLOMATIC RECIPROCITY AND  
SECURITY**

[Sections 151 through 153 repealed by section 502(e)(1) of P.L. 103-199 (107 Stat. 2326).]

**SEC. 154. REPORT ON PERSONNEL OF SOVIET STATE TRADING ENTERPRISES.**

Not later than 60 days after the date of enactment of this Act, the Secretary of State shall submit to the Congress a report discussing whether the number of personnel of Soviet state trading enterprises in the United States should be reduced.

**SEC. 155. [22 U.S.C. 4802 nt] PERSONNEL SECURITY PROGRAM FOR EMBASSIES IN HIGH INTELLIGENCE THREAT COUNTRIES.**

(a) **SPECIAL SECURITY PROGRAM.**—The Secretary of State shall develop and implement, within three months after the date of enactment of this Act, a special personnel security program for personnel of the Department of State assigned to United States diplomatic and consular posts in high intelligence threat countries who are responsible for security at those posts and for any individuals performing guard functions at those posts. Such program shall include—

- (1) selection criteria and screening to ensure suitability for assignment to high intelligence threat countries;
- (2) counterintelligence awareness and related training;
- (3) security reporting and command arrangements designed to counter intelligence threats; and
- (4) length of duty criteria and policies regarding rest and recuperative absences.

(b) **REPORT TO CONGRESS.**—Not later than 6 months after the date of enactment of this subsection, the Secretary of State shall report to the Congress on the special personnel security program required by subsection (a).

(c) **DEFINITION.**—As used in subsection (a), the term “high intelligence threat country” means—

- (1) a country listed as a Communist country in section 620(f) of the Foreign Assistance Act of 1961; and

(2) any other country designated as a high intelligence threat country for purposes of this section by the Secretary of State, the Secretary of Defense, the Director of Central Intelligence, or the Director of the Federal Bureau of Investigation.

**SEC. 156. ACCOUNTABILITY REVIEW BOARDS.**

(a) [Section 156(a) amended section 301 of the Diplomatic Security Act (22 U.S.C. 4831) to establish review boards.]

(b) [Section 156(b) amended section 304 of the Diplomatic Security Act (22 U.S.C. 4834) to include serious breaches of security involving intelligence activities in review board findings.]

**SEC. 157. [22 U.S.C. 3943 nt] PROHIBITION ON CERTAIN EMPLOYMENT AT UNITED STATES DIPLOMATIC AND CONSULAR MISSIONS IN COMMUNIST COUNTRIES.**

(a) PROHIBITION.—After September 30, 1990, no national of a Communist country may be employed as a foreign national employee in any area of a United States diplomatic or consular facility in any Communist country where classified materials are maintained.

(b) DEFINITION.—As used in this section, the term “Communist country” means a country listed in section 620(f) of the Foreign Assistance Act of 1961.

(c) ADDITIONAL FUNDS FOR HIRING UNITED STATES CITIZENS.—The Congress expresses its willingness to provide additional funds to the Department of State for the expenses of employing United States nationals to replace the individuals dismissed by reason of subsection (a).

(d) REPORT AND REQUEST FOR FUNDS.—As a part of the Department of State’s authorization request for fiscal years 1990 and 1991, the Secretary of State, in consultation with the heads of all relevant agencies, shall submit—

- (1) a report, which shall include—
  - (A) a feasibility study of the implementation of this section; and
  - (B) an analysis of the impact of the implementation of this section on the budget of the Department of State; and
- (2) a request for funds necessary for the implementation of this section pursuant to the findings and conclusions specified in the report under paragraph (1).

(e) WAIVER.—The President may waive this section—

- (1) if funds are not specifically authorized and appropriated to carry out this section; or
- (2) the President determines that it is in the national security interest of the United States to continue to employ foreign service nationals.

The President shall notify the appropriate committees of Congress each time he makes the waiver conferred on him by this section.

**SEC. 158. [22 U.S.C. 4041 nt] TERMINATION OF RETIREMENT BENEFITS FOR FOREIGN NATIONAL EMPLOYEES ENGAGING IN HOSTILE INTELLIGENCE ACTIVITIES.**

(a) TERMINATION.—The Secretary of State shall exercise the authorities available to him to ensure that the United States does not provide, directly or indirectly, any retirement benefits of any kind to any present or former foreign national employee of a

United States diplomatic or consular post against whom the Secretary has convincing evidence that such employee has engaged in intelligence activities directed against the United States. To the extent practicable, the Secretary shall provide due process in implementing this section.

(b) **WAIVER.**—The Secretary of State may waive the applicability of subsection (a) on a case-by-case basis with respect to an employee if he determines that it is vital to the national security of the United States to do so and he reports such waiver to the appropriate committees of the Congress.

**SEC. 159. REPORT ON EMPLOYMENT OF FOREIGN NATIONALS AT FOREIGN SERVICE POSTS ABROAD.**

Not later than 6 months after the date of enactment of this Act, the Secretary of State, in consultation with the Secretary of Commerce, the Secretary of Agriculture, the Director of Central Intelligence, the Director of the United States Information Agency, and the Director of the Peace Corps, shall submit to the Congress a report discussing the advisability of employing foreign nationals at foreign service posts abroad (including their access to automatic data processing systems and networks).

**SEC. 160. [22 U.S.C. 4851 nt] CONSTRUCTION SECURITY CERTIFICATION.**

(a) **CERTIFICATION.**—Before undertaking any new construction or major renovation project in any foreign facility intended for the storage of classified materials or the conduct of classified activities, or approving occupancy of a similar facility for which construction or major renovation began before the effective date of this section, the Secretary of State, after consultation with the Director of Central Intelligence, shall certify to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate that—

(1) appropriate and adequate steps have been taken to ensure the security of the construction project (including an evaluation of how all security-related factors with respect to such project are being addressed);

(2) the facility resulting from such project incorporates—  
 (A) adequate measures for protecting classified information and national security-related activities; and  
 (B) adequate protection for the personnel working in the diplomatic facility; and

(3) a plan has been put into place for the continued evaluation and maintenance of adequate security at such facility, which plan shall specify the physical security methods and technical countermeasures necessary to ensure secure operations, including any personnel requirements for such purposes.

(b) **AVAILABILITY OF DOCUMENTATION.**—All documentation with respect to a certification referred to in subsection (a) and any dissenting views thereto shall be available, in an appropriately classified form, to the Chairman of the Committee on Foreign Affairs of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate.

(c) **DIRECTOR OF CENTRAL INTELLIGENCE.**—The Director of Central Intelligence shall provide to the Secretary of State such assistance with respect to the implementation of this section as the Secretary of State may request.

(d) **DISSENTING VIEWS.**—If the Director of Central Intelligence disagrees with the Secretary of State with respect to any project certification made pursuant to subsection (a), the Director shall submit in writing disagreeing views to the Secretary of State.

**SEC. 161. PROTECTION FROM FUTURE HOSTILE INTELLIGENCE ACTIVITIES IN THE UNITED STATES.**

Section 205 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4305) is amended by adding at the end the following:

“(d)(1) After the date of enactment of this subsection, real property in the United States may not be acquired (by sale, lease, or other means) by or on behalf of the foreign mission of a foreign country described in paragraph (4) if, in the judgment of the Secretary of Defense (after consultation with the Secretary of State), the acquisition of that property might substantially improve the capability of that country to intercept communications involving United States Government diplomatic, military, or intelligence matters.

“(2) After the date of enactment of this subsection, real property in the United States may not be acquired (by sale, lease, or other means) by or on behalf of the foreign mission of a foreign country described in paragraph (4) if, in the judgment of the Director of the Federal Bureau of Investigation (after consultation with the Secretary of State), the acquisition of that property might substantially improve the capability of that country to engage in intelligence activities directed against the United States Government, other than the intelligence activities described in paragraph (1).

“(3) The Secretary of State shall inform the Secretary of Defense and the Director of the Federal Bureau of Investigation immediately upon notice being given pursuant to subsection (a) of this section of a proposed acquisition of real property by or on behalf of the foreign mission of a foreign country described in paragraph (4).

“(4) For the purposes of this subsection, the term ‘foreign country’ means—

“(A) any country listed as a Communist country in section 620(f) of the Foreign Assistance Act of 1961;

“(B) any country determined by the Secretary of State, for purposes of section 6(j) of the Export Administration Act of 1979, to be a country which has repeatedly provided support for acts of international terrorism; and

“(C) any other country which engages in intelligence activities in the United States which are adverse to the national security interests of the United States.

“(5) As used in this section, the term ‘substantially improve’ shall not be construed to prevent the establishment of a foreign mission by a country which, on the date of enactment of this section—

“(A) does not have a mission in the United States, or

“(B) with respect to a city in the United States, did not maintain a mission in that city.”.

**SEC. 162. APPLICATION OF TRAVEL RESTRICTIONS TO PERSONNEL OF CERTAIN COUNTRIES AND ORGANIZATIONS.**

(a) AMENDMENT TO FOREIGN MISSIONS ACT.—Title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4301 et seq.) as amended by section 128 is further amended by adding at the end the following new section:

**“SEC. 216. APPLICATION OF TRAVEL RESTRICTIONS TO PERSONNEL OF CERTAIN COUNTRIES AND ORGANIZATIONS.**

“(a) REQUIREMENT FOR RESTRICTIONS.—The Secretary shall apply the same generally applicable restrictions to the travel while in the United States of the individuals described in subsection (b) as are applied under this title to the members of the missions of the Soviet Union in the United States.

“(b) INDIVIDUALS SUBJECT TO RESTRICTIONS.—The restrictions required by subsection (a) shall be applied with respect to those individuals who (as determined by the Secretary) are—

“(1) the personnel of an international organization, if the individual is a national of any foreign country whose government engages in intelligence activities in the United States that are harmful to the national security of the United States;

“(2) the personnel of a mission to an international organization, if that mission is the mission of a foreign government that engages in intelligence activities in the United States that are harmful to the national security of the United States; or

“(3) the family members or dependents of an individual described in paragraphs (1) and (2);

and who are not nationals or permanent resident aliens of the United States.

“(c) WAIVERS.—The Secretary, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, may waive application of the restrictions required by subsection (a) if the Secretary determines that the national security and foreign policy interests of the United States so require.

“(d) REPORTS.—The Secretary shall transmit to the Select Committee on Intelligence and the Committee on Foreign Relations of the Senate, and to the Permanent Select Committee on Intelligence and the Committee on Foreign Affairs of the House of Representatives, not later than six months after the date of enactment of this section and not later than every six months thereafter, a report on the actions taken by the Secretary in carrying out this section during the previous six months.

“(e) DEFINITIONS.—For purposes of this section—

“(1) the term ‘generally applicable restrictions’ means any limitations on the radius within which unrestricted travel is permitted and obtaining travel services through the auspices of the Office of Foreign Missions for travel elsewhere, and does not include any restrictions which unconditionally prohibit the members of missions of the Soviet Union in the United States from traveling to designated areas of the United States and

which are applied as a result of particular factors in relations between the United States and the Soviet Union.

“(2) the term ‘international organization’ means an organization described in section 209(b)(1); and

“(3) the term ‘personnel’ includes—

“(A) officers, employees, and any other staff member, and

“(B) any individual who is retained under contract or other arrangement to serve functions similar to those of an officer, employee, or other staff member.”.

(b) EFFECTIVE DATE.—Subsection (a) of the section enacted by this section shall take effect 90 days after the date of enactment of this Act.

**SEC. 163. COUNTERINTELLIGENCE POLYGRAPH SCREENING OF DIPLOMATIC SECURITY SERVICE PERSONNEL.**

(a) IMPLEMENTATION OF PROGRAM.—Under the regulations issued pursuant to subsection (b), the Secretary of State shall implement a program of counterintelligence polygraph examinations for members of the Diplomatic Security Service (established pursuant to title II of the Diplomatic Security Act) during fiscal years 1988 and 1989.

(b) REGULATIONS.—The Secretary of State shall issue regulations to govern the program required by subsection (a). Such regulations shall provide that the scope of the examinations under such program, the conduct of such examinations, and the rights of individuals subject to such examinations shall be the same as those under the counterintelligence polygraph program conducted pursuant to section 1221 of the Department of Defense Authorization Act, 1986 (Public Law 99-145).

**SEC. 164. UNITED STATES EMBASSY IN HUNGARY.**

(a) FINDINGS.—The Congress finds that—

(1) the full implementation of the security program of a United States diplomatic mission to a Communist country cannot be accomplished if employees of that mission who are citizens of the host country are present in the same facilities where diplomatic and consular activities of a sensitive nature are performed;

(2) the facilities currently housing the offices of the United States diplomatic mission to Hungary are totally inadequate for the proper conduct of United States diplomatic activities, and unnecessarily expose United States personnel and their activities to the scrutiny of the intelligence services of the Government of Hungary;

(3) the presence of local citizens in a facility where sensitive activities are performed, as well as their access to certain unclassified administrative information, greatly enhances the ability of the host government’s intelligence services to restrict our diplomatic activities in that country;

(4) since the United States Government owns a substantial amount of property in Budapest, it is in a unique position to build new facilities which will substantially enhance the security of the United States diplomatic mission to Hungary; and

(5) units such as the Navy Construction Battalion are uniquely qualified to construct such facilities in an eastern bloc country.

(b) STATEMENT OF POLICY.—It is the sense of the Congress that—

(1) the Department of State should proceed in a timely fashion to negotiate an agreement with the Government of Hungary to allow for the construction of new chancery facilities in Budapest which would totally segregate sensitive activities from those of an unclassified and public-oriented character; and

(2) any such agreement should ensure that the United States Government will have the right to employ only American construction personnel and materials and will have complete control over access to the chancery site from the inception of construction.

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**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEARS 1992 AND 1993**

(Public Law 102-190; 105 Stat. 1290; approved December 5, 1991)

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**TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION  
AND MANAGEMENT**

**PART A—GENERAL MATTERS**

\* \* \* \* \*

**PART C—INTELLIGENCE MATTERS**

**SEC. 921. [10 U.S.C. 201 nt] DEFENSE INTELLIGENCE AGENCY.**

(a) SUPERVISION.—Subject to the authority, direction, and control of the Secretary of Defense, the Assistant Secretary of Defense referred to in section 138(b)(3) of title 10, United States Code, may during the period beginning on the date of the enactment of this Act and ending on January 1, 1993, be assigned supervision of the Defense Intelligence Agency but, notwithstanding any other provision of law, may not be assigned day-to-day operational control over the Defense Intelligence Agency.

(b) RESPONSIBILITIES OF DIRECTOR.—Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the Director of the Defense Intelligence Agency during the period beginning on the date of the enactment of this Act and ending on January 1, 1993, shall include the following:

- (1) Providing intelligence and intelligence support to—
  - (A) the Secretary of Defense;
  - (B) the Director of Central Intelligence;
  - (C) the Chairman of the Joint Chiefs of Staff; and
  - (D) the commanders of the unified and specified combatant commands.
- (2) Managing the General Defense Intelligence Program, including—
  - (A) preparing, reviewing, and submitting to the Secretary of Defense and the Director of Central Intelligence the budget proposal for that program for any fiscal year; and
  - (B) supervising the overall execution of the budgets and programs of all functional areas within the General Defense Intelligence Program, with emphasis on science and technology activities, human intelligence activities, and imagery activities.

(3) Ensuring that the roles and authorities of the functional managers within the Defense Intelligence Agency are strong enough to ensure that those managers have a significant role

in the preparation, review, approval, and supervision of the overall execution of the budgets and programs within their areas of responsibility.

The provision of substantive intelligence by the Director to the officers named in paragraph (1) shall not be subject to prior screening by any other official.

(c) **TRANSFER OF CERTAIN ACTIVITIES TO DIA.**—The Secretary of the Army and the Director of the Defense Intelligence Agency shall take all required actions, including transfer of all necessary resources, in order to transfer the Armed Forces Medical Intelligence Center and the Missile and Space Intelligence Center from the Department of the Army to the control of the Defense Intelligence Agency. Transfers pursuant to the preceding sentence shall be completed not later than January 1, 1992.

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**SEC. 923. [10 U.S.C. 201 nt] JOINT INTELLIGENCE CENTER.**

(a) **REQUIREMENT FOR CENTER.**—The Secretary of Defense shall direct the consolidation of existing single-service current intelligence centers that are located within the District of Columbia or its vicinity into a joint intelligence center that is responsible for preparing current intelligence assessments (including indications and warning). The joint intelligence center shall be located within the District of Columbia or its vicinity. As appropriate for the support of military operations, the joint intelligence center shall provide for and manage the collection and analysis of intelligence.

(b) **MANAGEMENT.**—The center shall be managed by the Defense Intelligence Agency in its capacity as the intelligence staff activity of the Chairman of the Joint Chiefs of Staff.

(c) **RESPONSIVENESS TO COMMAND AUTHORITIES.**—The Secretary shall ensure that the center is fully responsive to the intelligence needs of the Secretary, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.

**SEC. 924. [10 U.S.C. 113 nt] DEPARTMENT OF DEFENSE USE OF NATIONAL INTELLIGENCE COLLECTION SYSTEMS.**

(a) **PROCEDURES FOR USE.**—The Secretary of Defense, after consultation with the Director of Central Intelligence, shall prescribe procedures for regularly and periodically exercising national intelligence collection systems and exploitation organizations that would be used to provide intelligence support, including support of the combatant commands, during a war or threat to national security.

(b) **USE IN JOINT TRAINING EXERCISES.**—In accordance with procedures prescribed under subsection (a), the Chairman of the Joint Chiefs of Staff shall provide for the use of the national intelligence collection systems and exploitation organizations in joint training exercises to the extent necessary to ensure that those systems and organizations are capable of providing intelligence support, including support of the combatant commands, during a war or threat to national security.

(c) **REPORT.**—Not later than May 1, 1992, the Secretary of Defense and the Director of Central Intelligence shall submit to the congressional defense committees, the Select Committee on Intel-

ligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a joint report—

(1) describing the procedures prescribed under subsection (a);  
and

(2) stating the assessment of the Chairman of the Joint Chiefs of Staff of the performance in joint training exercises of the national intelligence collection systems and the Chairman's recommendations for any changes that the Chairman considers appropriate to improve that performance.

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 1993**

(Public Law 102-484; 106 Stat. 2315; approved December 23, 1992)

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**DIVISION A—DEPARTMENT OF  
DEFENSE AUTHORIZATIONS**

**TITLE I—PROCUREMENT**

**Subtitle A—Funding Authorizations**

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**Subtitle E—Defense-Wide Programs**

**SEC. 141. FUNDING FOR CERTAIN TACTICAL INTELLIGENCE PRO-  
GRAMS.**

(a) AUTHORIZATION.—Of the funds authorized to be appropriated under section 104, \$56,962,000 shall be available for modernizing either EP-3 Aries aircraft or RC-135 Rivet Joint aircraft.

(b) LIMITATION.—None of the funds provided under subsection (a) or funds appropriated or otherwise made available to the Department of Defense for procurement for fiscal year 1993 may be obligated for Navy EP-3 aircraft or Air Force RC-135 aircraft until the Secretary of Defense—

(1) transmits to Congress the report referred to in section 901;

(2) determines, in light of such report and other factors, which of those two aircraft best meets the intelligence requirements of the Department and, therefore, is to be retained in the inventory; and

(3) transmits to the congressional defense committees—

(A) a notification of the determination under paragraph (2); and

(B) a determination of the total requirements for the selected aircraft, taking into consideration the contribution of related systems such as the Navy ES-3 aircraft and the Air Force U-2 and C-130 Senior Scout aircraft.

(c) TRANSFER AUTHORITY.—(1) Upon determination of which aircraft referred to in subsection (a) best meets the intelligence requirements of the Department, and subject to the limitations in subsection (b), the Secretary of Defense may transfer the amount referred to in subsection (a) to either the Navy for procurement of EP-3 modifications or to the Air Force for procurement of RC-135 modifications, depending upon which aircraft was selected.

(2) The transfer authority in paragraph (1) is in addition to any other transfer authority provided in this or any other Act.

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## TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

### Subtitle A—Authorizations

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### Subtitle D—Other Matters

#### SEC. 241. MEDICAL COUNTERMEASURES AGAINST BIOWARFARE THREATS.

(a) **FUNDING.**—Of the amounts appropriated pursuant to section 201 for fiscal year 1993, not more than \$59,670,000 shall be available for the medical component of the Biological Defense Research Program (BDRP) of the Department of Defense.

(b) **LIMITATIONS.**—(1) Funds appropriated or otherwise made available for the Department of Defense for fiscal year 1993 may be obligated and expended for product development, and for research, development, testing, and evaluation, of medical countermeasures against biowarfare threat agents only in accordance with this section.

(2) Of the funds made available pursuant to subsection (a), not more than \$10,000,000 may be obligated or expended for research, development, test, or evaluation of medical countermeasures against far-term validated biowarfare threat agents.

(3) Of the funds made available pursuant to subsection (a) other than funds made available pursuant to paragraph (2) for the purpose set out in that paragraph—

(A) not more than 80 percent may be obligated and expended for product development, or for research, development, test, or evaluation, of medical countermeasures against near-term validated biowarfare threat agents; and

(B) not more than 20 percent may be obligated or expended for product development, or for research, development, test, or evaluation, of medical countermeasures against mid-term validated biowarfare threat agents.

(c) **DEFINITIONS.**—In this section:

(1) The term “validated biowarfare threat agent” means a biological agent that—

(A) is named in the biological warfare threat list published by the Defense Intelligence Agency; and

(B) is identified as a biowarfare threat by the Deputy Chief of Staff of the Army for Intelligence in accordance with Army regulations applicable to intelligence support for the medical component of the Biological Defense Research Program.

(2) The term “near-term validated biowarfare threat agent” means a validated biowarfare threat agent that has been, or is being, developed or produced for weaponization within 5 years, as assessed and determined by the Defense Intelligence Agency.

(3) The term “mid-term validated biowarfare threat agent” means a validated biowarfare threat agent that is an emerging biowarfare threat, is the object of research by a foreign threat country, and will be ready for weaponization in more than 5 years and less than 10 years, as assessed and determined by the Defense Intelligence Agency.

(4) The term “far-term validated biowarfare threat agent” means a validated biowarfare threat agent that is a future biowarfare threat, is the object of research by a foreign threat country, and could be ready for weaponization in more than 10 years and less than 20 years, as assessed and determined by the Defense Intelligence Agency.

(5) The term “weaponization” means incorporation into usable ordnance or other militarily useful means of delivery.

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### **TITLE XIII—MATTERS RELATING TO ALLIES AND OTHER NATIONS**

#### **Subtitle A—Burdensharing**

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#### **Subtitle D—Matters Relating to the Middle East and Persian Gulf Region**

##### **SEC. 1331. REPORT ON THE UNITED STATES STRATEGIC POSTURE IN THE MIDDLE EAST AND PERSIAN GULF REGION.**

(a) **REQUIREMENT FOR REPORT.**—Not later than February 1, 1993, the Secretary of Defense, together with the Secretary of State and the Director for Central Intelligence, shall submit to Congress a report on the United States strategic posture in the Middle East and Persian Gulf region.

(b) **CONTENT OF REPORT.**—The report shall include an assessment of the following matters:

(1) The adequacy of United States power projection forces, strategic lift, forward deployed forces, prepositioned materiel, and force sustainability capabilities for protecting United States strategic interests in the Middle East and the Persian Gulf region in order to ensure the security needs of Israel, Egypt, and Persian Gulf states friendly to the United States.

(2) United States policy, plans, and programs for ensuring Israel's military and technological superiority over potential threats.

(3) United States capabilities for assisting Israel in a military emergency and the adequacy of United States military assistance and technology transfer for ensuring that Israel has the capability to deter war and to defend its territory with minimal risk and loss of life.

(4) The state of strategic cooperation between the United States and Israel, including—

(A) a thorough assessment of options for prepositioning in Israel appropriate defense articles for use by the United States in the region; and

(B) an assessment of United States policies, plans, and programs for ensuring that maximum advantage is taken of Israel's strategic location and Israel's ability to provide unique options regarding military technologies and production.

(5) The adequacy of United States power projection forces, military assistance, arms transfers, and cooperation arrangements for addressing Egypt's security arrangements to deter outside threats and to participate in regional security efforts with the United States and other nations.

(6) The adequacy of United States power projection forces, military assistance, and arms transfers for addressing the security requirements of the Gulf Cooperation Council States.

(7) The adequacy of the capabilities of the United States and countries friendly to the United States for deterring and defending against long-range missile threats and the use of weapons of mass destruction in the Middle East and the Persian Gulf region.

(c) INTELLIGENCE ASSESSMENT.—As part of the report submitted pursuant to subsection (a), the Secretary of Defense shall provide a military threat assessment for the Middle East and Persian Gulf region. The intelligence assessment shall include a description of—

(1) the overall military threat to United States strategic interests in the Persian Gulf region;

(2) the overall military threat to Israel and the military threats to Israel from individual countries, including an assessment of the Arab-Israeli military balance and a discussion of the changes taking place in that balance;

(3) the military threats to Egypt;

(4) the military threats to the Gulf Cooperation Council States; and

(5) the threats to United States interests and to regional States friendly to the United States that result from the proliferation of long-range missiles and weapons of mass destruction.

(d) FORM OF REPORT.—The report may be submitted in classified and unclassified forms.

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#### TITLE XV—NONPROLIFERATION

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#### SEC. 1503. REPORT ON DEPARTMENT OF DEFENSE AND DEPARTMENT OF ENERGY NONPROLIFERATION ACTIVITIES.

(a) REPORT REQUIRED.—The Secretary of Defense and the Secretary of Energy shall jointly submit to the committees of Congress named in subsection (d)(1) a report describing the role of the Department of Defense and the Department of Energy with respect to the nonproliferation policy of the United States.

(b) MATTERS TO BE COVERED IN REPORT.—The report shall—

(1) address how the Secretary of Defense integrates and coordinates existing intelligence and military capabilities of the Department of Defense and how the Secretary of Energy inte-

grates and coordinates the intelligence and emergency response capabilities of the Department of Energy in support of the nonproliferation policy of the United States;

(2) identify existing and planned capabilities within the Department of Defense, including particular capabilities of the military services, and the Department of Energy to (A) detect and monitor clandestine weapons of mass destruction programs, (B) respond to terrorism or accidents involving such weapons and to theft of related weapons materials, and (C) assist with interdiction and destruction of weapons of mass destruction and related weapons materials;

(3) describe, for the Department of Defense, the degree to which the Secretary of Defense has incorporated a nonproliferation mission into the overall mission of the unified combatant commands and how the Special Operations Command might support the commanders of the unified and specified commands in that mission;

(4) consider the appropriate roles of the Defense Advance Research Projects Agency (DARPA), the Defense Nuclear Agency (DNA), the On-Site-Inspection Agency (OSIA), and other Department of Defense agencies, as well as the national laboratories of the Department of Energy, in providing technical assistance and support for the efforts of the Department of Defense and the Department of Energy with respect to nonproliferation; and

(5) identify existing and planned mechanisms for improving the integration of Department of Defense and Department of Energy nonproliferation activities with those of other Federal departments and agencies.

(c) COORDINATION WITH OTHER AGENCIES.—The report required by subsection (a) shall, for purposes of subsection (b)(5), be coordinated with the heads of other appropriate departments and agencies.

(d) SUBMISSION OF REPORT.—(1) The report required by subsection (a) shall be submitted—

(A) to the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(B) to the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Energy and Commerce of the House of Representatives.

(2) The report shall be submitted not later than 180 days after the date of enactment of this Act and shall be submitted in unclassified form and, as necessary, in classified form.

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**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 1991**

(Public Law 101-510; 104 Stat. 1485; approved November 5, 1990)

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**TITLE X—DRUG INTERDICTION AND COUNTER-DRUG  
ACTIVITIES**

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**SEC. 1004.<sup>1</sup> [10 U.S.C. 374 nt] ADDITIONAL SUPPORT FOR COUNTER-  
DRUG ACTIVITIES**

(a) **SUPPORT TO OTHER AGENCIES.**—During fiscal years 1991 through 2002, the Secretary of Defense may provide support for the counter-drug activities of any other department or agency of the Federal Government or of any State, local, or foreign law enforcement agency for any of the purposes set forth in subsection (b) if such support is requested—

(1) by the official who has responsibility for the counter-drug activities of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government;

(2) by the appropriate official of a State or local government, in the case of support for State or local law enforcement agencies; or

(3) by an appropriate official of a department or agency of the Federal Government that has counter-drug responsibilities, in the case of support for foreign law enforcement agencies.

(b) **TYPES OF SUPPORT.**—The purposes for which the Secretary may provide support under subsection (a) are the following:

(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State or local government by the Department of Defense for the purposes of—

(A) preserving the potential future utility of such equipment for the Department of Defense; and

(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department of Defense.

(2) The maintenance, repair, or upgrading of equipment (including computer software), other than equipment referred to in subparagraph (A) for the purpose of—

<sup>1</sup> This section was amended by section 1041 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484; 106 Stat. 2491). This section was also amended by section 1021 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105-261; 112 Stat. 2120).

(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

(B) upgrading such equipment to ensure the compatibility of that equipment with equipment used by the Department of Defense.

(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counter-drug activities within or outside the United States.

(4) The establishment (including an unspecified minor military construction project) and operation of bases of operations or training facilities for the purpose of facilitating counter-drug activities of the Department of Defense or any Federal, State, or local law enforcement agency within or outside the United States or counter-drug activities of a foreign law enforcement agency outside the United States.

(5) Counter-drug related training of law enforcement personnel of the Federal Government, of State and local governments, and of foreign countries, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

(6) The detection, monitoring, and communication of the movement of—

(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(B) surface traffic outside the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

(8) Establishment of command, control, communications, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

(9) The provision of linguist and intelligence analysis services.

(10) Aerial and ground reconnaissance.

(c) **LIMITATION ON COUNTER-DRUG REQUIREMENTS.**—The Secretary of Defense may not limit the requirements for which support may be provided under subsection (a) only to critical, emergent, or unanticipated requirements.

(d) **CONTRACT AUTHORITY.**—In carrying out subsection (a), the Secretary of Defense may acquire services or equipment by contract for support provided under that subsection if the Department of Defense would normally acquire such services or equipment by contract for the purpose of conducting a similar activity for the Department of Defense.

(e) **LIMITED WAIVER OF PROHIBITION.**—Notwithstanding section 376 of title 10, United States Code, the Secretary of Defense may provide support pursuant to subsection (a) in any case in which the Secretary determines that the provision of such support would ad-

versely affect the military preparedness of the United States in the short term if the Secretary determines that the importance of providing such support outweighs such short-term adverse effect.

(f) CONDUCT OF TRAINING OR OPERATION TO AID CIVILIAN AGENCIES.—In providing support pursuant to subsection (a), the Secretary of Defense may plan and execute otherwise valid military training or operations (including training exercises undertaken pursuant to section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1564)) for the purpose of aiding civilian law enforcement agencies.

(g) RELATIONSHIP TO OTHER LAWS.—(1) The authority provided in this section for the support of counter-drug activities by the Department of Defense is in addition to, and except as provided in paragraph (2), not subject to the requirements of chapter 18 of title 10, United States Code.

(2) Support under this section shall be subject to the provisions of section 375 and, except as provided in subsection (e), section 376 of title 10, United States Code.

(h) CONGRESSIONAL NOTIFICATION OF FACILITIES PROJECTS.—(1) When a decision is made to carry out a military construction project described in paragraph (2), the Secretary of Defense shall submit to the congressional defense committees written notice of the decision, including the justification for the project and the estimated cost of the project. The project may be commenced only after the end of the 21-day period beginning on the date on which the written notice is received by Congress.

(2) Paragraph (1) applies to an unspecified minor military construction project that—

(A) is intended for the modification or repair of a Department of Defense facility for the purpose set forth in subsection (b)(4); and

(B) has an estimated cost of more than \$500,000.

**SECTION 1542 OF THE HOUSING AND COMMUNITY  
DEVELOPMENT ACT OF 1992**

**SEC. 1542. [12 U.S.C. 1831m-1] REPORTS OF INFORMATION REGARDING  
SAFETY AND SOUNDNESS OF DEPOSITORY INSTITUTIONS.**

(a) **REPORTS TO APPROPRIATE FEDERAL BANKING AGENCIES.—**

(1) **IN GENERAL.—**The Attorney General, the Secretary of the Treasury, and the head of any other agency or instrumentality of the United States shall, unless otherwise prohibited by law, disclose to the appropriate Federal banking agency any information that the Attorney General, the Secretary of the Treasury, or such agency head believes raises significant concerns regarding the safety or soundness of any depository institution doing business in the United States.

(2) **EXCEPTIONS.—**

(A) **INTELLIGENCE INFORMATION.—**

(i) **IN GENERAL.—**The Director of Central Intelligence shall disclose to the Attorney General or the Secretary of the Treasury any intelligence information that would otherwise be reported to an appropriate Federal banking agency pursuant to paragraph (1). After consultation with the Director of Central Intelligence, the Attorney General or the Secretary of the Treasury, shall disclose the intelligence information to the appropriate Federal banking agency.

(ii) **PROCEDURES FOR RECEIPT OF INTELLIGENCE INFORMATION.—**Each appropriate Federal banking agency, in consultation with the Director of Central Intelligence, shall establish procedures for receipt of intelligence information that are adequate to protect the intelligence information.

(B) **CRIMINAL INVESTIGATIONS, SAFETY OF GOVERNMENT INVESTIGATORS, INFORMANTS, AND WITNESSES.—**If the Attorney General, the Secretary of the Treasury or their respective designees determines that the disclosure of information pursuant to paragraph (1) may jeopardize a pending civil investigation or litigation, or a pending criminal investigation or prosecution, may result in serious bodily injury or death to Government employees, informants, witnesses or their respective families, or may disclose sensitive investigative techniques and methods, the Attorney General or the Secretary of the Treasury shall—

(i) provide the appropriate Federal banking agency a description of the information that is as specific as possible without jeopardizing the investigation, litigation, or prosecution, threatening serious bodily injury or death to Government employees, informants,

or witnesses or their respective families, or disclosing sensitive investigation techniques and methods; and

(ii) permit a full review of the information by the Federal banking agency at a location and under procedures that the Attorney General determines will ensure the effective protection of the information while permitting the Federal banking agency to ensure the safety and soundness of any depository institution.

(C) GRAND JURY INVESTIGATIONS; CRIMINAL PROCEDURE.—Paragraph (1) shall not—

(i) apply to the receipt of information by an agency or instrumentality in connection with a pending grand jury investigation; or

(ii) be construed to require disclosure of information prohibited by rule 6 of the Federal Rules of Criminal Procedure.

(b) PROCEDURES FOR RECEIPT OF DISCLOSURE REPORTS.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, each appropriate Federal banking agency shall establish procedures for receipt of a disclosure report by an agency or instrumentality made in accordance with subsection (a)(1). The procedures established in accordance with this subsection shall ensure adequate protection of information disclosed, including access control and information accountability.

(2) PROCEDURES RELATED TO EACH DISCLOSURE REPORT.—Upon receipt of a report in accordance with subsection (a)(1), the appropriate Federal banking agency shall—

(A) consult with the agency or instrumentality that made the disclosure regarding the adequacy of the procedures established pursuant to paragraph (1), and

(B) adjust the procedures to ensure adequate protection of the information disclosed.

(c) EFFECT ON AGENCIES.—This section does not impose an affirmative duty on the Attorney General, the Secretary of the Treasury, or the head of any agency or instrumentality of the United States to collect new or to review existing information.

(d) DEFINITIONS.—For purposes of this section, the terms “appropriate Federal banking agency” and “depository institution” have the same meanings as in section 8 of the Federal Deposit Insurance Act.

**FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL  
YEARS 1994 AND 1995**

(Public Law 103-236; 108 Stat. 382; approved April 30, 1994)

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**TITLE IX—COMMISSION ON PRO-  
TECTING AND REDUCING GOVERN-  
MENT SECRECY**

**SEC. 901. [50 U.S.C. 401 nt] SHORT TITLE.**

This title may be cited as the “Protection and Reduction of Government Secrecy Act”.

**SEC. 902. [50 U.S.C. 401 nt] FINDINGS.**

The Congress makes the following findings:

(1) During the Cold War an extensive secrecy system developed which limited public access to information and reduced the ability of the public to participate with full knowledge in the process of governmental decisionmaking.

(2) In 1992 alone 6,349,532 documents were classified and approximately three million persons held some form of security clearance.

(3) The burden of managing more than 6 million newly classified documents every year has led to tremendous administrative expense, reduced communication within the government and within the scientific community, reduced communication between the government and the people of the United States, and the selective and unauthorized public disclosure of classified information.

(4) It has been estimated that private businesses spend more than \$14 billion each year implementing government mandated regulations for protecting classified information.

(5) If a smaller amount of truly sensitive information were classified the information could be held more securely.

(6) In 1970 a Task Force organized by the Defense Science Board and headed by Dr. Frederick Seitz concluded that “more might be gained than lost if our Nation were to adopt—unilaterally, if necessary—a policy of complete openness in all areas of information”.

(7) The procedures for granting security clearances have themselves become an expensive and inefficient part of the secrecy system and should be closely examined.

(8) A bipartisan study commission specially constituted for the purpose of examining the consequences of the secrecy system will be able to offer comprehensive proposals for reform.

**SEC. 903. [50 U.S.C. 401 nt] PURPOSE.**

It is the purpose of this title to establish for a two-year period a Commission on Protecting and Reducing Government Secrecy—

- (1) to examine the implications of the extensive classification of information and to make recommendations to reduce the volume of information classified and thereby to strengthen the protection of legitimately classified information; and
- (2) to examine and make recommendations concerning current procedures relating to the granting of security clearances.

**SEC. 904. [50 U.S.C. 401 nt] COMPOSITION OF THE COMMISSION.**

(a) ESTABLISHMENT.—To carry out the purpose of this title, there is established a Commission on Protecting and Reducing Government Secrecy (in this title referred to as the “Commission”).

(b) COMPOSITION.—The Commission shall be composed of twelve members, as follows:

- (1) Four members appointed by the President, of whom two shall be appointed from the executive branch of the Government and two shall be appointed from private life.
- (2) Two members appointed by the Majority Leader of the Senate, of whom one shall be a Member of the Senate and one shall be appointed from private life.
- (3) Two members appointed by the Minority Leader of the Senate, of whom one shall be a Member of the Senate and one shall be appointed from private life.
- (4) Two members appointed by the Speaker of the House of Representatives, of whom one shall be a Member of the House and one shall be appointed from private life.
- (5) Two members appointed by the Minority Leader of the House of Representatives, of whom one shall be a Member of the House and one shall be appointed from private life.

(c) CHAIRMAN.—The Commission shall elect a Chairman from among its members.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the Chairman or a majority of its members. Seven members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

(e) APPOINTMENT OF MEMBERS; INITIAL MEETING.—(1) It is the sense of the Congress that members of the Commission should be appointed not later than 60 days after the date of enactment of this title.

(2) If after 60 days from the date of enactment of this Act seven or more members of the Commission have been appointed, those members who have been appointed may meet and select a Chairman who thereafter shall have authority to begin the operations of the Commission, including the hiring of staff.

**SEC. 905. [50 U.S.C. 401 nt] FUNCTIONS OF THE COMMISSION.**

The functions of the Commission shall be—

- (1) to conduct, for a period of 2 years from the date of its first meeting, an investigation into all matters in any way related to any legislation, executive order, regulation, practice, or

procedure relating to classified information or granting security clearances; and

(2) to submit to the Congress a final report containing such recommendations concerning the classification of national security information and the granting of security clearances as the Commission shall determine, including proposing new procedures, rules, regulations, or legislation.

**SEC. 906. [50 U.S.C. 401 nt] POWERS OF THE COMMISSION.**

(a) **IN GENERAL.**—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths, and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may deem advisable.

(2) Subpoenas issued under paragraph (1)(B) may be issued under the signature of the Chairman of the Commission, the chairman of any designated subcommittee, or any designated member, and may be served by any person designated by such Chairman, subcommittee chairman, or member. The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section.

(b) **CONTRACTING.**—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) **INFORMATION FROM FEDERAL AGENCIES.**—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, bureau, agency, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman.

(d) **ASSISTANCE FROM FEDERAL AGENCIES.**—(1) The Secretary of State is authorized on a reimbursable or non-reimbursable basis to provide the Commission with administrative services, funds, facilities, staff, and other support services for the performance of the Commission's functions.

(2) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(3) In addition to the assistance set forth in paragraphs (1) and (2), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff,

and other support services as they may deem advisable and as may be authorized by law.

(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

**SEC. 907. [50 U.S.C. 401 nt] STAFF OF THE COMMISSION.**

(a) IN GENERAL.—The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(b) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**SEC. 908. [50 U.S.C. 401 nt] COMPENSATION AND TRAVEL EXPENSES.**

(a) COMPENSATION.—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay on account of their service on the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

**SEC. 909. [50 U.S.C. 401 nt] SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.**

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements,

except that no person shall be provided with access to classified information pursuant to this section who would not otherwise qualify for such security clearance.

**SEC. 910. [50 U.S.C. 401 nt] FINAL REPORT OF COMMISSION; TERMINATION.**

(a) **FINAL REPORT.**—Not later than two years after the date of the first meeting of the Commission, the Commission shall submit to the Congress its final report, as described in section 905(2).

(b) **TERMINATION.**—(1) The Commission, and all the authorities of this title, shall terminate on the date which is 60 days after the date on which a final report is required to be transmitted under subsection (a).

(2) The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its final report and disseminating that report.

## **L. COUNTRY-SPECIFIC LEGISLATIVE RESTRICTIONS<sup>1</sup>**

### **SECTIONS 106 AND 107 OF PUBLIC LAW 99-569 (INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1987)**

#### **RESTRICTION ON SUPPORT FOR MILITARY OR PARAMILITARY OPERATIONS IN NICARAGUA**

SEC. 106. Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1987 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102, or pursuant to section 502 of the National Security Act of 1947, or pursuant to any provision of law specifically providing such funds, materiel, or assistance.

#### **RESTRICTION ON INTELLIGENCE AGENCY COOPERATION WITH SOUTH AFRICA**

SEC. 107. No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. It is the policy of the United States that no agency or entity of the United States involved in intelligence activities may provide any intelligence information to the Government of South Africa which pertains to a South African internal opposition group, movement, organization, or individual. Any change in such policy, or the provision of intelligence information contrary to such policy, shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947.

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<sup>1</sup> In connection with this subject, see also title II of the Act entitled "An Act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1987, and for other purposes" (P.L. 99-591).

**SECTION 9045 OF PUBLIC LAW 99-591 (DEPARTMENT OF  
DEFENSE APPROPRIATIONS ACT, 1987)**

SEC. 9045. None of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended during fiscal year 1987 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance unless in accordance with the terms and conditions specified by section 106 of the Intelligence Authorization Act for fiscal year 1987.

**SECTION 722 OF PUBLIC LAW 99-83 (INTERNATIONAL SECURITY DEVELOPMENT COOPERATION ACT OF 1985)**

**SEC. 722. NICARAGUA.**

(a) \* \* \*

\* \* \* \* \*

(d) PROHIBITION RELATING TO MILITARY OR PARAMILITARY OPERATIONS IN NICARAGUA.—Notwithstanding any other provision of law, no funds authorized to be appropriated or otherwise made available by this Act (except the funds authorized to be appropriated in this section), by the Foreign Assistance Act of 1961, or by the Arms Export Control Act shall be used to provide assistance of any kind, either directly or indirectly, to any person or group engaging in an insurgency or other act of rebellion against the Government of Nicaragua. The United States shall not enter into any arrangement conditioning, expressly or impliedly, the provision of assistance under this Act or the purchase of defense articles and services under the Arms Export Control Act upon the provision of assistance by a recipient to persons or groups engaging in an insurgency or other act of rebellion against the Government of Nicaragua.

(e) LIMITATION ON USE OF FUNDS AGAINST NICARAGUA.—None of the funds authorized to be appropriated in this or any other Act can be used to fund directly, or indirectly, activities against the Government of Nicaragua which have not been authorized by, or pursuant to, law and which would place the United States in violation of our obligations under the Charter of the Organization of American States, to which the United States is a signatory, or under international law as defined by treaty commitments agreed to, and ratified by, the Government of the United States.

\* \* \* \* \*

**SECTION 1351 OF PUBLIC LAW 99-661 (NATIONAL  
DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1987)**

**SEC. 1351. LIMITATION ON SOURCE OF FUNDS FOR NICARAGUAN  
DEMOCRATIC RESISTANCE**

(a) **LIMITATION.**—Notwithstanding title II of the Military Construction Appropriations Act, 1987, or any other provision of law, funds appropriated or otherwise made available to the Department of Defense for any fiscal year for operation and maintenance may not be used to provide assistance for the democratic resistance forces in Nicaragua. If funds appropriated or otherwise made available to the Department of Defense for any fiscal year are authorized by law to be used for such assistance, funds for such purpose may only be derived from amounts appropriated or otherwise made available to the Department for procurement (other than ammunition).

(b) **REPORT.**—Before funds appropriated or otherwise made available to the Department of Defense are released to be used for the purpose described in subsection (a), the Secretary of Defense shall submit to Congress a report describing the specific source of such funds.

## ACT OF APRIL 18, 1989

(Public Law 101-14; 103 Stat. 37; approved April 18, 1989)

AN ACT To implement the Bipartisan Accord on Central America of March 24, 1989.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. POLICY.

The purpose of this Act is to implement the Bipartisan Accord on Central America between the President and the Congress signed on March 24, 1989.

### SEC. 2. ADDITIONAL HUMANITARIAN ASSISTANCE.

(a) TRANSFER OF FUNDS.—The President may transfer to the Agency for International Development, from unobligated funds from the appropriations accounts specified in section 6—

(1) up to \$49,750,000, to provide humanitarian assistance to the Nicaraguan Resistance, to remain available through February 28, 1990;

(2) such funds as may be necessary to provide transportation in accordance with section 3 for assistance authorized by paragraph (1); and

(3) not to exceed \$5,000,000 to “Operating Expenses of the Agency for International Development” to meet the necessary administrative expenses to carry out this Act, to remain available through March 31, 1990.

(b) DEFINITION.—For purposes of this section and section 3, the term “humanitarian assistance” means—

(1) food, clothing, and shelter;

(2) medical services, medical supplies, and nonmilitary training for health and sanitation;

(3) nonmilitary training of the recipients with respect to their treatment of civilians and other armed forces personnel, in accordance with internationally accepted standards of human rights;

(4) payment for such items, services, and training;

(5) replacement batteries for existing communications equipment; and

(6) support for voluntary reintegration of and voluntary regional relocation by the Nicaraguan Resistance.

### SEC. 3. TRANSPORTATION OF HUMANITARIAN ASSISTANCE.

(a) IN GENERAL.—The transportation of humanitarian assistance on or after the date of enactment of this Act which, before such date, was specifically authorized by law to be provided to the Nicaraguan Resistance, or which is authorized to be provided by section 2, shall be arranged solely by the Agency for International Development in a manner consistent with the Bipartisan Accord on

Central America between the President and the Congress signed on March 24, 1989.

(b) PROHIBITION ON MIXED LOADS.—Transportation of any military assistance, or of any assistance other than that specified in 2(b), is prohibited.

**SEC. 4. MEDICAL ASSISTANCE.**

The President may transfer, in addition to funds transferred prior to March 31, 1989, to the Administrator of the Agency for International Development from unobligated funds from appropriations accounts specified in section 6, up to \$4,166,000, to be used only for the provision of medical assistance for the civilian victims of the Nicaraguan civil strife to be transported and administered by the Catholic Church in Nicaragua.

**SEC. 5. UNITED STATES POLICY CONCERNING ECONOMIC ASSISTANCE FOR CENTRAL AMERICA.**

As part of an effort to promote democracy and address on a long-term basis the economic causes of regional and political instability in Central America—

(1) in recognition of the recommendations of groups such as the National Bipartisan Commission on Central America, the Inter-American Dialogue, and the Sanford Commission;

(2) to assist in the implementation of these economic plans and to encourage other countries in other parts of the world to join in extending assistance to Central America; and

(3) in the context of an agreement to end military conflict in the region;

the Congress encourages the President to submit proposals for bilateral and multilateral action—

(A) to provide additional economic assistance to the democratic countries of Central America to promote economic stability, expand educational opportunity, foster progress in human rights, bolster democratic institutions, and strengthen institutions of justice;

(B) to facilitate the ability of Central American economies to grow through the development of their infrastructure, expansion of exports, and the strengthening of increased investment opportunities;

(C) to provide a more realistic plan to assist Central American countries in managing their foreign debt; and

(D) to develop these initiatives in concert with Western Europe, Japan, and other democratic allies.

**SEC. 6. SOURCE OF FUNDS; AND RESCISSION.**

(INCLUDING TRANSFERS AND RESCISSION)

(a) SOURCE OF FUNDS.—The appropriations accounts from which funds may be transferred pursuant to sections 2 and 4 are the following accounts in amounts not to exceed the following:

(1) Missile Procurement, Army, 1988, \$3,500,000.

(2) Procurement of Weapons and Tracked Combat Vehicles, Army, 1987, \$12,739,000.

(3) Other Procurement, Army, 1988, \$761,000.

(4) Research, Development, Test and Evaluation, Air Force, 1988, \$1,902,000.

(5) Weapons Procurement, Navy, 1989, \$2,000,000.

(6) Research, Development, Test and Evaluation, Navy, 1989, \$13,400,000.

(7) Other Procurement, Air Force, 1987, \$32,300,000.

(b) RESCISSION.—Of the funds available for Research, Development, Test and Evaluation, Navy, 1989, \$10,600,000 is hereby rescinded.

**SEC. 7. PROHIBITION ON THE USE OF CERTAIN FUNDS.**

(a) MILITARY OPERATIONS.—No funds available to any agency or entity of the United States Government under this Act may be obligated or expended pursuant to section 502(a)(2) of the National Security Act of 1947 for the purpose of providing funds, materiel, or other assistance to the Nicaraguan Resistance to support military or paramilitary operations in Nicaragua.

(b) HUMAN RIGHTS AND OTHER VIOLATIONS.—No assistance under this Act may be provided to any group that retains in its ranks any individual who has been found to engage in—

(1) gross violations of internationally recognized human rights (as defined in section 502(B)(d)(1) of the Foreign Assistance Act of 1961); or

(2) drug smuggling or significant misuse of public or private funds.

**SEC. 8. STANDARDS, PROCEDURES, CONTROLS, AND OVERSIGHT.**

(a) ACCOUNTABILITY STANDARDS, PROCEDURES, AND CONTROL.—In implementing this Act, the Agency for International Development, and any other agency of the United States Government authorized to carry out activities under this Act, shall adopt the standards, procedures, and controls for the accountability of funds comparable to those applicable with respect to the assistance for the Nicaraguan Resistance provided under section 111 of the joint resolution making further continuing appropriations for the fiscal year 1988 (Public Law 100–202) and title IX of Public Law 100–463. Any changes in such standards, procedures, and controls shall be developed and adopted in consultation with the committees designated in subsection (b).

(b) CONGRESSIONAL OVERSIGHT.—Congressional oversight within the House of Representatives and the Senate with respect to assistance provided by this Act shall be within the jurisdiction of the Committees on Appropriations of the House of Representatives and Senate, the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.

(c) EXTENSION OF PREVIOUS PROVISIONS.—The provisions of the Act of April 1, 1988 (Public Law 100–276), contained in subsections (b), (d), and (e) of section 4 and in section 5 shall apply to the provision of assistance under this Act except that section 4(d) shall not apply to the Intelligence Community.

**SEC. 9. PROHIBITION.**

Except as provided in this Act, no additional assistance may be provided to the Nicaraguan Resistance, unless the Congress enacts a law specifically authorizing such assistance.

**SEC. 10. REPEAL.**

Title IX of Public Law 100-463 is hereby repealed.

**SEC. 11. REPORTING REQUIREMENTS.**

The Secretary of State shall consult regularly with and report to the Congress on progress in meeting the goals of the peace and democratization process, including the use of assistance provided in this Act.

## ACT OF OCTOBER 21, 1989

(Public Law 101-119; 103 Stat. 699; approved October 21, 1989)

AN ACT To provide assistance for free and fair elections in Nicaragua.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That of the amounts remaining unexpended from funds allocated to the Agency for International Development, up to \$3,000,000 of the funds made available by section 9 of Public Law 100-276, and up to \$6,000,000 of the funds made available by section 2 of Public Law 101-14, may be used by the Administrator of the Agency for International Development, notwithstanding any other provision of law, for assistance for the promotion of democracy and national reconciliation in Nicaragua: *Provided,* That such assistance may be made available only as follows: (1) up to \$5,000,000 in assistance to internal groups, such as support for political organizations and alliances, independent elements of the media, independent labor unions, and business, civic, and professional groups through and consistent with the charter and standard operating procedures of the National Endowment for Democracy; and for support for the election process and monitoring including, but not limited to the organizations specified in proviso 2(c) below, and (2) up to \$4,000,000 (a) for election support intended to ensure the conduct of free, fair, and open elections through and consistent with the charter of the National Endowment for Democracy (which may include contributions through the National Opposition Union to the Supreme Electoral Council as necessary); (b) for support for the election process and monitoring; and (c) of which not less than \$400,000 shall be made available for the Council of Freely-Elected Heads of Government, and of which not less than \$250,000 shall be made available for the Center for Democracy and of which not less than \$400,000 shall be made available for the Center for Training and Election Promotion: *Provided further,* That the provisions of sections 7, 8, and 9 of Public Law 101-14 shall be applicable to funds made available by this Act: *Provided further,* That the Agency for International Development shall report to the appropriate Committees of Congress prior to obligation of funds: *Provided further,* That all travel by Members of Congress conducted pursuant to the upcoming Presidential elections in Nicaragua shall be in accordance with section 1754, title 22, United States Code: *Provided further,* That it is the sense of Congress that the National Opposition Union's representative on the Supreme Electoral Council will seek to ensure that any funds going to the Supreme Electoral Council are used solely for technical electoral purposes, such as ballot boxes and ballot printing: *Provided further,* That funds made available by this Act shall remain available until February 28, 1990.

**SECTION 8144 OF PUBLIC LAW 100-202 (DEPARTMENT OF  
DEFENSE APPROPRIATIONS ACT, 1988)**

SEC. 8144. None of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States Government may be obligated or expended during fiscal year 1988 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance unless in accordance with the terms and conditions specified by section 104 of the Intelligence Authorization Act (Public Law 100-178) for fiscal year 1988.

**SECTION 906 OF PUBLIC LAW 99-83 (INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1985)**

**SEC. 906. PROHIBITION ON CERTAIN ASSISTANCE TO THE KHMER ROUGE.**

(a) PROHIBITION.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this Act or any other Act may be obligated or expended for the purpose or with the effect of promoting, sustaining, or augmenting, directly or indirectly, the capacity of the Khmer Rouge or any of its members to conduct military or paramilitary operations in Cambodia or elsewhere in Indochina.

(b) DEOBLIGATION OF CERTAIN FUNDS.—All funds appropriated before the date of enactment of this section which were obligated but not expended for activities having the purpose or effect described in subsection (a) shall be deobligated and shall be deposited in the Treasury of the United States as miscellaneous receipts.

(c) EXCEPTION FOR HUMANITARIAN ASSISTANCE.—This section shall not be construed as limiting the provision of food, medicine, or other humanitarian assistance to the Cambodian people.



## **M. CITATIONS TO OTHER STATUTES OF INTELLIGENCE INTEREST**

### **Personnel**

- 5 U.S.C. 305 (CIA and NSA exemptions from systematic review of agency operations) (see also 5 U.S.C. 5331)
- 5 U.S.C. 306 (CIA exemptions from strategic planning)
- 5 U.S.C. 2302 (FBI, CIA, DIA, NSA, and other intelligence exemption from merit system principles)
- 5 U.S.C. 2305 (CIA and NSA special personnel authorities exemption from merit systems principles)
- 5 U.S.C. 2953 (CIA exemption from 5-year cost projection requirements in certain reports to Congress)
- 5 U.S.C. 3132 (FBI, CIA, DIA, NSA, and other intelligence exemption from senior executive service) (see also 5 U.S.C. 3391, 3591, 4311, and 5381)
- 5 U.S.C. 3391 (cross reference to Sec. 3132 intelligence exemptions, relating to senior executive service personnel management)
- 5 U.S.C. 3401 (FBI, CIA, and NSA exemption from part-time career employment opportunity statutes)
- 5 U.S.C. 3591 (intelligence exemptions from senior executive service separation statutes by cross reference to Sec. 3132)
- 5 U.S.C. 4301 (CIA, DIA, NSA, and other intelligence exemptions from performance appraisal statutes)
- 5 U.S.C. 4311 (intelligence exemptions from senior executive service performance appraisal statutes by cross reference to Sec. 3132)
- 5 U.S.C. 4701 (FBI, CIA, DIA, NSA, and other intelligence exemption from personnel research and demonstration project statutes)
- 5 U.S.C. 5102 (CIA and NSA exemptions from personnel classification statutes)
- 5 U.S.C. 5331 (CIA and NSA exemptions from general schedule pay rate statutes by cross reference to Sec. 5102)
- 5 U.S.C. 5342 (CIA and NSA exemptions from prevailing rate pay systems)
- 5 U.S.C. 5373 (CIA exemption from GS-18 pay rate statutory cap for pay fixed by administrative action)
- 5 U.S.C. 5381 (intelligence exemption from senior executive service pay statutes by cross reference to Sec. 3132)
- 5 U.S.C. 5597 (DoD separation pay incentive)
- 5 U.S.C. 5727 (CIA exemption from certain statutory restrictions on government shipment of privately owned vehicle)
- 5 U.S.C. 5924 (CIA and NSA dependents travel)
- 5 U.S.C. 5948 (applicability of physician comparability allowances to CIA and NSA medical personnel)

- 5 U.S.C. 6304 (DIA and NSA executive service exemptions from restriction on accumulation of annual leave)
- 5 U.S.C. 7103 (FBI, CIA, NSA exemption from Federal labor-management relations statutes)
- 5 U.S.C. 7211 (right of any federal employee to furnish information to Congress)
- 5 U.S.C. 7301–7352 (federal employee suitability, security and conduct)
- 5 U.S.C. 7531–32 (national security suspensions and removals of DoD and certain other federal personnel)
- 5 U.S.C. 9101 (DOD, OPM, CIA, FBI access to criminal history records for security clearances investigations)
- 5 U.S.C. Appendix, Federal Advisory Committee Act, Sec. 4 (CIA exemption)
- 5 U.S.C. Appendix, 105(a)(1), section 105(a)(1) of the Ethics in Government Act of 1978 (CIA, DIA, NSA, and other intelligence exemptions from public availability of financial disclosure reports)
- 10 U.S.C. 1089 (suits against U.S. for malpractice by CIA medical personnel)
- 10 U.S.C. 1489 (death gratuity for survivors of certain DoD intelligence personnel)
- 22 U.S.C. 3970 (compensation for certain imprisoned CIA-related foreign nationals)
- 26 U.S.C. 912 (exclusion from gross income of certain CIA allowances and benefits)
- 31 U.S.C. 1115 (CIA exemption from performance plan requirement)
- 31 U.S.C. 9503 (exemption, subject to Presidential adjustment, of CIA retirement system from annual pension plan report to Congress and GAO)
- 42 U.S.C. 290dd–1 (CIA, FBI, and NSA exemptions from statute prohibiting termination or non-hiring based solely on alcoholism)
- 42 U.S.C. 290ee–1 (CIA, FBI, and NSA exemptions from statute prohibiting termination or non-hiring based solely on ground of prior drug abuse)

#### Procurement

- 10 U.S.C. 2315 (DoD intelligence and cryptologic exemption from certain government-wide restrictions on computer procurement)
- 10 U.S.C. 2795 (DMA agreements to exchange mapping, charting, and geodetic data)
- 40 U.S.C. 474, Federal Property and Administrative Services Act of 1949, as amended, Sec. 602(d)(17) (CIA exemption)
- 40 U.S.C. 759(a), Federal Property and Administrative Services Act of 1949, Sec. 111(a) (Procurement of DoD automatic data processing equipment or services)

#### Immigration

- 8 U.S.C. 1105, Immigration and Nationality Act, Sec. 105 (FBI and CIA liaison with Commissioner of Immigration and Naturalization)

- 8 U.S.C. 1427(c), Immigration and Nationality Act, Sec. 316(c) (satisfaction of physical presence requirement for naturalization by person employed by or under contract to CIA)
- 50 U.S.C. 47c, Atomic Energy and Special Nuclear Materials Rewards Act, Sec. 4 (Director of Central Intelligence role in admitting alien)

#### Use of funds

- 10 U.S.C. 128 (funds transfers of foreign cryptologic support)
- 10 U.S.C. 140a (DoD expenditures for counterintelligence consultations with foreign officials)
- 10 U.S.C. 140b (Military departments' use of proceeds from counterintelligence operations)
- 28 U.S.C. 539 (FBI expenditures for counterintelligence consultations with foreign officials)
- 50 U.S.C. 47e, Atomic Weapons and Special Nuclear Materials Rewards Act, Sec. 6 (Director of Central Intelligence role in paying rewards)
- 18 U.S.C. 1028 (intelligence exemption from false identification statute)
- 18 U.S.C. 1029 (intelligence exemption from credit card protection statute)
- 18 U.S.C. 1030 (intelligence exemption from computer fraud statute)
- 18 U.S.C. 1367 (intelligence exemption from satellite interference statute)
- 18 U.S.C. 1546 (intelligence exemption from false visa statute)

#### Information protection

- 5 U.S.C. 7342 (protection of intelligence sources and methods in CIA reports on receipt and disposition of foreign gifts)
- 22 U.S.C. 2577(c), Arms Control and Disarmament Act, Sec. 37 (protection of intelligence sources, methods and persons employed in verification, in arms control report to Congress)
- 22 U.S.C. 2656(c), Foreign Relations Authorization Act, FY 1979, Sec. 503 (protection of intelligence sources, methods and persons engaged in monitoring scientific/technological developments, in report to Congress)
- 42 U.S.C. 2162, Atomic Energy Act of 1954, Sec. 142 (Director of Central Intelligence role in downgrading restrictions on restricted data concerning atomic energy programs of other nations)
- 50 U.S.C. 783(b) (federal employee unauthorized disclosure of classified information to agent of a foreign power)
- 50 U.S.C. Appendix 2411, Export Administration Act of 1979, as amended, Sec. 12 (protection of intelligence sources, methods and activities in sharing export control-related information with Department of Commerce and GAO)

#### Environmental national security exemptions

- 16 U.S.C. 1456(c) and (d) (Coastal Zone Management Act of 1972)
- 16 U.S.C. 1536(j) and (k) (Endangered Species Act of 1973)
- 33 U.S.C. 1322(d), 1323(a), 1368(d) (Federal Water Pollution Control Act)
- 42 U.S.C. 300h-7(h) and 300j-6(b) (Public Health Service Act)

- 42 U.S.C. 2021d(b)(3) (Atomic Energy Act of 1954)
- 42 U.S.C. 4332(c) (National Environmental Policy Act of 1969)
- 42 U.S.C. 4903(b) (Noise Control Act of 1972)
- 42 U.S.C. 6961(c), 6991f(b), 6992e(a) (Solid Waste Disposal Act)
- 42 U.S.C. 7412(i)(4), 7418(b), 7503(e)(3), 7522(b)(1), 7586(g), 7588(e), 7606(d), 7671c(f), (Clean Air Act)
- 42 U.S.C. 9620(j) (Comprehensive Environmental Response, Compensation, and Liability Act of 1980)
- 42 U.S.C. 10106 (Nuclear Waste Policy Act of 1982)
- 43 U.S.C. 1763 (Federal Land Policy and Management Act of 1976)

Other

- 10 U.S.C. 167(a) (intelligence/special activities exception to special operations forces authority)
- 18 U.S.C. 3056 note (executive agency assistance to Secret Service)
- 22 U.S.C. 2291c (relating to availability of aircraft to foreign countries)
- 22 U.S.C. 2780(h) (exemption from prohibitions on transactions in countries supporting acts of international terrorism)
- 22 U.S.C. 3927, Foreign Service Act of 1980, Sec. 207 (chiefs of U.S. diplomatic missions abroad to be kept fully and currently informed)
- 31 U.S.C. 1344 (intelligence exceptions to official vehicle restriction statute)
- 42 U.S.C. 3789K, Omnibus Crime Control and Safe Streets Act of 1968, as amended, Sec. 815 (prohibition of Office of Justice Programs, National Institute of Justice, Bureau of Justice Statistics, and Bureau of Justice Assistance from using CIA services)
- 44 U.S.C. 3502, 3518 (intelligence exemptions from Paperwork Reduction Act)
- 50 U.S.C. 401 note (preservation of Director of Central Intelligence authorities, notwithstanding National Narcotics Act, Sec. 1304 (21 U.S.C. 1203))
- 10 U.S.C. 192 (DIA and NSA exemption from certain CSD or JCS oversight requirements)
- 10 U.S.C. 192 (DIA and NSA combat support role)
- 10 U.S.C. 194(d) (NSA exclusion from certain limitations on personnel)
- 10 U.S.C. 3013(c)(7); 5013(c)(7); 8013(c)(7) (Service Secretaries supervision and control of departmental intelligence activities)
- 26 U.S.C. 6050m(e) (exception for certain classified or confidential contracts)
- Anti-Terrorism and Arms Export Amendments Act of 1989 (especially with respect to amendments to the Arms Export Control and Export Administration Act)

## **N. PROVISIONS RELATING TO THE USA PATRIOT ACT AND FISA**

### **GUIDELINES FOR DISCLOSURE OF GRAND JURY AND ELECTRONIC, WIRE, AND ORAL INTERCEPTION IN- FORMATION IDENTIFYING UNITED STATES PERSONS**

#### **SECTION 203 GUIDELINES**

(September 23, 2002)

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MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL

SUBJECT: Guidelines for Disclosure of Grand Jury and Electronic, Wire, and Oral  
Interception Information Identifying United States Persons

The prevention of terrorist activity is the overriding priority of the Department of Justice, and improved information sharing among federal agencies is a critical component of our overall strategy to protect the security of America and the safety of her people.

Section 203 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, 115 Stat. 272, 278-81, authorizes the sharing of foreign intelligence, counterintelligence, and foreign intelligence information obtained through grand jury proceedings and electronic, wire, and oral interception, with relevant Federal officials to assist in the performance of their duties. This authorization greatly enhances the capacity of law enforcement to share information and coordinate activities with other federal officials in our common effort to prevent and disrupt terrorist activities.

At the same time, the law places special restrictions on the handling of intelligence information concerning United States persons ("U.S. person information"). Executive Order 12333, 46 FR 59941 (Dec. 8, 1981) ("EO 12333"), for example, restricts the type of U.S. person information that agencies within the intelligence community may collect, and requires that the collection, retention, and dissemination of such information must conform with procedures established by the head of the agency concerned and approved by the Attorney General. Section 203(c) of the USA PATRIOT Act, likewise, directs the Attorney General to establish procedures for the disclosure of grand jury and electronic, wire, and oral interception information "that identifies a United States person, as that term is defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)."

Pursuant to section 203(c), this memorandum specifies the procedures for labeling information that identifies U.S. persons. Information identifying U.S. persons disseminated pursuant to section 203 must be marked to identify that it contains such identifying information prior to disclosure.

Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. § 1801) provides:

“United States person” means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.

Information should be marked as containing U.S. person information if the information identifies any U.S. person. The U.S. person need not be the target or subject of the grand jury investigation or electronic, wire, and oral surveillance; the U.S. person need only be mentioned in the information to be disclosed. However, the U.S. person must be “identified.” That is, the grand jury or electronic, wire, and oral interception information must discuss or refer to the U.S. person by name (or nickname or alias), rather than merely including potentially identifying information such as an address or telephone number that requires additional investigation to associate with a particular person.

Determining whether grand jury or electronic, wire, and oral interception information identifies a U.S. person may not always be easy. Grand jury and electronic, wire, and oral interception information standing alone will usually not establish unequivocally that an identified individual or entity is a U.S. person. In most instances, it will be necessary to use the context and circumstances of the information pertaining to the individual in question to determine whether the individual is a U.S. person. If the person is known to be located in the U.S., or if the location is unknown, he or she should be treated as a U.S. person unless the individual is identified as an alien who has not been admitted for permanent residence or circumstances give rise to the reasonable belief that the individual is not a U.S. person. Similarly, if the individual identified is known or believed to be located outside the U.S., he or she should be treated as a non-U.S. person unless the individual is identified as a U.S. person or circumstances give rise to the reasonable belief that the individual is a U.S. person.

Grand jury and electronic, wire, and oral interception information disclosed under section 203 should be received in the recipient agency by an individual who is designated to be a point of contact for such information for that agency. Grand jury and electronic, wire, and oral interception information identifying U.S. persons is subject to section 2.3 of EO 12333 and the procedures of each intelligence agency implementing EO 12333, each of which place important limitations on the types of U.S. person information that may be retained and disseminated by the United States intelligence

community. These provisions require that information identifying a U.S. person be deleted from intelligence information except in limited circumstances. An intelligence agency that, pursuant to section 203, receives from the Department of Justice (or another Federal law enforcement agency) information acquired by electronic, wire, and oral interception techniques should handle such information in accordance with its own procedures implementing EO 12333 that are applicable to information acquired by the agency through such techniques.

In addition, the Justice Department will disclose grand jury and electronic, wire, and oral interception information subject to use restrictions necessary to comply with notice and record keeping requirements and as necessary to protect sensitive law enforcement sources and ongoing criminal investigations. When imposed, use restrictions shall be no more restrictive than necessary to accomplish the desired effect.

These procedures are intended to be simple and minimally burdensome so that information sharing will not be unnecessarily impeded. Nevertheless, where warranted by exigent or unusual circumstances, the procedures may be modified in particular cases by memorandum of the Attorney General, Deputy Attorney General, or their designees, with notification to the Director of Central Intelligence or his designee. These procedures are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

The guidelines in this memorandum shall be effective immediately.

**GUIDELINES REGARDING DISCLOSURE TO THE DIRECTOR OF CENTRAL INTELLIGENCE AND HOMELAND SECURITY OFFICIALS OF FOREIGN INTELLIGENCE ACQUIRED IN THE COURSE OF A CRIMINAL INVESTIGATION**

**SECTION 905(a) GUIDELINES**

(September 23, 2002)

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MEMORANDUM FOR HEADS OF DEPARTMENT OF JUSTICE COMPONENTS  
AND HEADS OF FEDERAL DEPARTMENTS AND AGENCIES WITH  
LAW ENFORCEMENT RESPONSIBILITIES

FROM: THE ATTORNEY GENERAL

SUBJECT: Guidelines Regarding Disclosure to the Director of Central Intelligence  
and Homeland Security Officials of Foreign Intelligence Acquired in the  
Course of a Criminal Investigation

**Background**

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, 115 Stat. 272, 389, enacted into law certain requirements for the sharing of information by Federal law enforcement agencies with the intelligence community. Specifically, section 905(a) of the USA PATRIOT Act provides that “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 Central 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.”

Since the enactment of the USA PATRIOT Act, Federal law enforcement agencies have taken steps to improve existing channels of communication with the intelligence community and certain offices relating to homeland security (collectively, “Receiving Agencies”) in order to share foreign intelligence acquired in the course of criminal investigations. The purpose of these guidelines is to formalize a framework pursuant to section 905(a) of the USA PATRIOT Act that will facilitate and increase to the fullest extent possible the continued expeditious sharing of such information. The procedures established by these guidelines for the sharing of information between components of the Department of Justice or other departments and agencies having law enforcement responsibilities with Recipients (as defined below) are not, however, intended to re-

place or supersede existing operational or information sharing mechanisms between Federal law enforcement agencies and Receiving Agencies. As appropriate, those relationships should continue to be used to the fullest extent possible.

Heads of Department of Justice components and heads of other departments and agencies of the Federal government having law enforcement responsibility shall distribute these guidelines within their respective departments, components and agencies, as appropriate, to ensure prompt and effective implementation of section 905(a) and these guidelines.

#### Guidelines for Section 905(a) Information Sharing

1. **Scope of Application.** These guidelines apply to all elements of the Department of Justice having criminal investigative or prosecutorial responsibilities and to all other departments and agencies of the Federal government having law enforcement responsibilities (hereinafter, collectively, "Federal Law Enforcement Agencies"). These guidelines do not apply to agencies that provide support to criminal investigations, but that do not themselves conduct criminal investigations (e.g., the Department of Treasury's Office of Foreign Assets Control and Financial Crimes Enforcement Network).

2. **Law Enforcement Information Subject to Mandatory Disclosure.** Subject to any exceptions established by the Attorney General in consultation with the Director of Central Intelligence (the "Director") and the Assistant to the President for Homeland Security, section 905(a) and these guidelines require expeditious disclosure to the Director, the Assistant to the President for Homeland Security or other members of the U.S. intelligence community or homeland security agencies as are designated under paragraph 4, *infra*, of foreign intelligence acquired in the course of a criminal investigation conducted by Federal Law Enforcement Agencies.

a. As used herein, the term "foreign intelligence" is defined in section 3 of the National Security Act of 1947 (50 U.S.C. § 401a) as: "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities."

b. The term "section 905(a) information" means foreign intelligence acquired in the course of a criminal investigation.

c. Section 203(d) of the USA PATRIOT Act, provides that: "Notwithstanding any other law, it shall be lawful for foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. § 401a)) or foreign intelligence information obtained as part of a criminal investigation to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties." Thus, no other Federal or state law operates to prevent the sharing of such information so long as disclosure of such information will assist the Director and the Assistant to the President for Homeland Security in the performance of their official duties,

and Federal Law Enforcement Agencies shall, notwithstanding any other law, expeditiously disclose to the Recipients (as defined below) section 905(a) information.

3. **Training.** Pursuant to section 908 of the USA PATRIOT Act, the Department of Justice, in consultation with the Director, the Assistant to the President for Homeland Security, and other Federal Law Enforcement Agencies, will develop a training curriculum and program to ensure that law enforcement officials receive sufficient training to identify foreign intelligence subject to the disclosure requirements under these guidelines.

4. **Entities to Whom Disclosure Shall Be Made.** The Director, in consultation with the Assistant to the President for Homeland Security, shall promptly advise the Attorney General of his designations of appropriate offices, entities and/or officials of Receiving Agencies to receive the disclosure of section 905(a) information not covered by an established operational or information sharing mechanism. Said designees, together with the Director and the Assistant to the President for Homeland Security and all offices, entities, or individuals covered by such an established mechanism, are collectively referred to herein as the "Recipients." The Director, in consultation with the Assistant to the President for Homeland Security, shall ensure that sufficient Recipients are identified to facilitate expeditious sharing and handling of section 905(a) information.

5. **Methods for Disclosure of Section 905(a) Information.** Subject only to any exceptions that may be established pursuant to paragraph 9(a), *infra*, all section 905(a) information shall be shared as expeditiously as possible with one or more of the Recipients. The procedures established in this paragraph may be supplemented by more detailed definitions and protocols disseminated to appropriate law enforcement, intelligence, and homeland security officials in classified or confidential form.

a. **Terrorism or Weapons of Mass Destruction (WMD) Information.** Federal law enforcement officials shall disclose immediately to one or more Recipients information which they reasonably believe relates to a potential terrorism or WMD threat to the United States homeland, its critical infrastructure, key resources (whether physical or electronic), or to United States persons or interests worldwide. Other terrorism or WMD information, as defined by section 5(a)(i) and (ii), shall be disclosed to one or more Recipients as expeditiously as possible. In all cases, the official shall disclose such information with the understood priorities of disrupting terrorist plans, preventing terrorist attacks, and preserving the lives of United States persons. Disclosure may be made through one or more of the following: existing field-level operational or information sharing mechanisms, including a Joint Terrorism Task Force (JTTF); existing headquarters operational or information sharing mechanisms; or when the officer reasonably believes that time does not permit the use of any such established mechanisms, any other field level or other mechanism intended to facilitate

immediate action, response or other efforts to address such threats.

As soon as possible after any disclosure under the preceding paragraph, the disclosing official shall notify the relevant JTTF of the disclosure. The JTTF shall, as appropriate, keep the relevant Anti-Terrorism Task Force (ATTF) apprised of the nature of the information disclosed. The relevant ATTF shall, in turn, apprise the Department of Justice Criminal Division's Terrorism and Violent Crime Section (TVCS). Where information is disclosed by the headquarters of the relevant Federal Law Enforcement Agency, the headquarters shall, as soon as practicable and to the extent reasonable, notify TVCS of all disclosures. Federal agencies may require additional notification procedures where appropriate.

For purposes of these guidelines, "terrorism information" and "weapons of mass destruction information" are defined as follows:

- i. **Terrorism Information:** All information relating to the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals or threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations, or to communications between such groups or individuals, or information relating to groups or individuals reasonably believed to be assisting or associated with them.
  - ii. **Weapons of Mass Destruction (WMD) Information:** All information relating to conventional explosive weapons and non-conventional weapons capable of causing mass casualties and damage, including chemical, biological, radiological and nuclear agents and weapons and the means of delivery of such weapons.
- b. **All Other Section 905(a) Information.** In consultation with the Department of Justice and the Director, Federal Law Enforcement Agencies shall develop (or continue to follow existing) protocols (which may be classified or confidential) to provide for the expeditious sharing of section 905(a) information concerning all other subjects.
- c. **Consultation With Respect to Title III and Grand Jury Materials.** Except as to section 905(a) information related to a potential terrorism or WMD threat, disclosure of 905(a) information will be accomplished in consultation with the prosecuting official assigned to the case if: (i) the information was developed through investigatory activities occurring after a particular investigation has been referred formally to the Department of Justice for prosecution; and (ii) the information was produced by an electronic, wire, or oral interception or solely as a result of a grand jury subpoena or testimony occurring before a grand jury receiving information concerning the particular investigation. This consultation may be the basis for

identifying appropriate use restrictions or for seeking an exception to the section 905(a) disclosure requirements as set forth in paragraph 9, *infra*. Consultation shall be accomplished expeditiously, and any resulting disclosure shall occur no later than 48 hours after the prosecutor is initially notified. Section 905(a) information that a Federal law enforcement official reasonably believes is related to a potential terrorism or WMD threat, including information received from an electronic, wire, or oral interception or as a result of a grand jury subpoena or testimony occurring before a grand jury, shall be immediately disclosed by the Federal law enforcement official using the mechanisms described in paragraph 5(a), *supra*, and without need for advance consultation with the prosecuting official responsible for the case. Contemporaneously or as soon after making the disclosure as possible, the Federal law enforcement official shall notify the prosecuting official responsible for the case in order to facilitate notice to the court, if necessary or appropriate.

6. Requests for Additional Information and Amplification of Initial Disclosure.

a. Initial disclosure of section 905(a) information to Recipients shall be accomplished automatically and without specific prior request to the disclosing department, component, or agency.

b. Requests by any Recipient for additional information or for clarification or amplification related to the initial disclosure should be coordinated, as applicable, through the component that provided the initial information or the designated headquarters office of the relevant Federal law enforcement agency.

7. Disclosure of Grand Jury and Electronic, Wire, and Oral Interception Information.

a. Sections 203(a) and (b) of the USA PATRIOT Act permit the disclosure of federal grand jury information and electronic, wire, and oral interception information to specified recipients for specified purposes (hereinafter "section 203 information").

b. Where section 203 information is shared pursuant to Paragraph 5, notice of such disclosures shall be promptly provided to the Office of Enforcement Operations (OEO) of the Department of Justice, Criminal Division. OEO shall establish appropriate record keeping procedures to ensure compliance with notice requirements related to the disclosure of grand jury information pursuant to section 203.

c. The USA PATRIOT Act requires special procedures for the disclosure of section 203 information that identifies United States persons. The Federal law enforcement agency disclosing section 203 information pursuant to these guidelines shall observe the procedures established by the Attorney General for disclosing such information that identifies a United States person. A copy of the section 203 United States person information procedures is attached as Appendix B.

d. By these guidelines the special procedures that were established pursuant to section 203(c) are made applicable to all section 905(a) disclosures of information that identify a United States person.

8. Information Use Restrictions.

a. In the absence of any significant law enforcement interests, as identified below in paragraph 8(b), necessitating the imposition of use restrictions, Federal Law Enforcement Agencies shall disclose section 905(a) information to Recipients pursuant to these guidelines free of any originator controls or information use restrictions.

b. The originator of the section 905(a) information may impose appropriate use restrictions necessary to protect sensitive law enforcement sources and ongoing criminal investigations and prosecutions. The scope and duration of such restrictions, including caveats restricting use of the disclosed information to a particular level or element of the intelligence community, will be tailored to address the particular situation or subject matter involved.

i. When imposed, use restrictions shall be no more restrictive than necessary to accomplish the desired effect.

ii. Once imposed, use restrictions shall be reviewed periodically by the originator to determine whether they can be narrowed or lifted at the request of Recipients.

c. Section 203 information shall be disclosed subject to any use restrictions necessary to comply with notice and record keeping requirements and to protect sensitive law enforcement sources and ongoing criminal investigations and prosecutions.

9. Attorney General Exceptions to Mandatory Disclosure of Section 905 Information.

a. Section 905(a) expressly authorizes the Attorney General, in consultation with the Director, to exempt by regulation from the mandatory disclosure obligation one or more classes of foreign intelligence or foreign intelligence related to one or more targets or matters.

b. Pending the development of appropriate permanent exceptions, exemptions from the mandatory disclosure obligation will be determined by the Attorney General in consultation with the Director and the Assistant to the President for Homeland Security on a case-by-case basis.

c. Requests for an Attorney General exception to mandatory disclosure of section 905(a) information must be submitted by the department, component or agency head in writing with a complete description of the facts and circumstances giving rise to the need for an exception and why lesser measures such as use restrictions are not adequate.

10. Administering Agent. The Assistant Attorney General of the Criminal Division, in consultation with affected Agencies, Offices and Divisions of the Department of Justice, will act as executive

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agent for the Attorney General in administering these guidelines and providing advice and assistance to Federal law enforcement regarding the implementation of sections 203 and 905.

11. **No Private Rights Created.** These procedures are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

12. **Effective Immediately.** The guidelines in this memorandum shall be effective immediately.

**APPENDICES:**

A. **Extract Copy of Section 905**

B. **Procedures for Marking, Handling and Disclosing Information that Identifies a United States Person**

**GUIDELINES REGARDING PROMPT HANDLING OF REPORTS OF POSSIBLE CRIMINAL ACTIVITY INVOLVING FOREIGN INTELLIGENCE SOURCES**

**SECTION 905(b) GUIDELINES**

(September 23, 2002)

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MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL

SUBJECT: Guidelines Regarding Prompt Handling of Reports of Possible Criminal Activity Involving Foreign Intelligence Sources

Section 905(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, 115 Stat. 272, 389, requires the Attorney General to develop guidelines to ensure that the Department of Justice responds within a reasonable period of time to reports from the intelligence community of possible criminal activity involving foreign intelligence sources or potential foreign intelligence sources. See 50 U.S.C. § 403-5b(b). This memorandum establishes procedures to administer the requirements of section 905(b).

Pursuant to section 1.7(a) of Executive Order 12333, 28 U.S.C. § 535(b), and the 1995 *Memorandum of Understanding: Reporting of Information Concerning Federal Crimes* ("1995 MOU") between the Department of Justice and members of the intelligence community (Attachment A hereto), the intelligence community is required, *inter alia*, to report to the Assistant Attorney General or a designated Deputy Assistant Attorney General of the Criminal Division information that it has collected in the performance of its intelligence activities concerning possible federal crimes by employees of an intelligence agency and violations of specified federal criminal laws by any other person. This reporting requirement extends to matters in which the intelligence community agency determines that investigation or prosecution of the matter "may result in a public disclosure of classified information or intelligence sources or methods or would jeopardize the security of ongoing intelligence operations." 1995 MOU at 9.

Upon receipt of a report of possible criminal activity pursuant to the 1995 MOU, the designated Deputy Assistant Attorney General shall refer the possible crime report to the appropriate component within the Department of Justice for review, including a determination of whether to commence or decline to commence a criminal investigation.

Section 905(b) reflects a recognition that when the possible criminal activities involve a foreign intelligence source or potential foreign intelligence source, the referring intelligence community agency may have a strong interest in knowing on an expedited basis whether the Department of Justice intends to investigate potential crimes.

Accordingly, I hereby direct that, when an intelligence community agency making such a possible crime report (all of which fall within the scope of and therefore should be made pursuant to the 1995 MOU) to the Criminal Division of the Department:

(1) notifies the Assistant Attorney General or designated Deputy Assistant Attorney General<sup>1</sup> that the possible crime report involves activity of a foreign intelligence source or potential foreign intelligence source; and

(2) requests an expedited determination of the Department of Justice's intent to commence or decline to commence a criminal investigation,

the designated Deputy Assistant Attorney General and/or another attorney within the Criminal Division or other relevant component of the Department shall expeditiously confer with the referring intelligence community agency about the possible criminal activity, the reasons for the time sensitivity, and the nature and extent of the intelligence equities that may be affected by a decision to commence or decline to commence a criminal investigation of the reported activity. Upon receipt of the report, the designated Deputy Assistant Attorney General shall determine whether immediate contact with the referring agency is necessary. If a need for immediate contact is not established, an appropriate Department attorney will be made available for an initial contact with the referring intelligence community agency within seven days of the receipt of the report requesting an expedited determination.

After conferring with the referring agency, receiving any necessary additional information, and consulting with other appropriate Department components, the Assistant Attorney General or the designated Deputy Assistant Attorney General of the Criminal Division or another appropriate Department attorney shall inform the referring agency within a reasonable period of time whether the Department intends to commence or decline to commence a criminal investigation of the conduct described in the crime report. In all cases, Department attorneys shall take into account any special time urgency associated with the intelligence community agency's intelligence equities or the possible criminal activity and, if necessary, provide notice of the prosecutorial decision on a highly expedited basis. Except in extraordinary circumstances, the referring agency should be informed within 30 days. Extraordinary circumstances requiring more than 30 days may include situations where the case is of unusual complexity or where information necessary for a prosecutorial decision is unavailable.

<sup>1</sup>The notification should be documented in writing, consistent with the procedures set forth in the 1995 Memorandum of Understanding governing the reporting by the intelligence community of possible criminal activity to the Department of Justice.

These procedures are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

The guidelines in this memorandum shall be effective immediately.

**UNITED STATES FOREIGN INTELLIGENCE  
SURVEILLANCE COURT OF REVIEW**

[Note: This opinion is subject to formal revision before publication  
in the Federal Reporter.]

**In Re: Sealed Case No. 02-011**

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Argued September 9, 2002

Decided November 18, 2002

Consolidated with 02-002

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On Motions for Review of Orders of the United States Foreign Intelligence  
Surveillance Court (Nos. 02-662 and 02-968)

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*Theodore B. Olson*, Solicitor General, argued the cause for appellant the United States, with whom *John Ashcroft*, Attorney General, *Larry D. Thompson*, Deputy Attorney General, *David S. Kris*, Associate Deputy Attorney General, *James A. Baker*, Counsel for Intelligence Policy, and *Jonathan L. Marcus*, Attorney Advisor, were on the briefs.

*Ann Beeson*, *Jameel Jaffer*, *Steven R. Shapiro*, for *amicus curiae* American Civil Liberties Union, with whom *James X. Dempsey* for Center for Democracy and Technology, *Kate Martin* for Center for National Security Studies, *David L. Sobel* for Electronic Privacy Information Center, and *Lee Tien* for Electronic Frontier Foundation, were on the brief.

*John D. Cline*, *Zachary A. Ives*, and *Joshua Dratel*, for *amicus curiae* National Association of Criminal Defense Lawyers.

Before: GUY, *Senior Circuit Judge, Presiding*; SILBERMAN and LEAVY, *Senior Circuit Judges*.

Opinion for the Court filed *Per Curiam*.

*Per Curiam*: This is the first appeal from the Foreign Intelligence Surveillance Court to the Court of Review since the passage of the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. §§ 1801-1862 (West 1991 and Supp. 2002), in 1978. This appeal is brought by the United States from a FISA court surveillance order which imposed certain restrictions on the government. Since the government is the only party to FISA proceedings, we have accept-

ed briefs filed by the American Civil Liberties Union (ACLU)<sup>1</sup> and the National Association of Criminal Defense Lawyers (NACDL) as *amici curiae*.

Not surprisingly this case raises important questions of statutory interpretation, and constitutionality. After a careful review of the briefs filed by the government and *amici*, we conclude that FISA, as amended by the Patriot Act<sup>2</sup>, supports the government's position, and that the restrictions imposed by the FISA court are not required by FISA or the Constitution. We therefore remand for further proceedings in accordance with this opinion.

## I.

The court's decision from which the government appeals imposed certain requirements and limitations accompanying an order authorizing electronic surveillance of an "agent of a foreign power" as defined in FISA. There is no disagreement between the government and the FISA court as to the propriety of the electronic surveillance; the court found that the government had shown probable cause to believe that the target is an agent of a foreign power and otherwise met the basic requirements of FISA. The government's application for a surveillance order contains detailed information to support its contention that the target, who is a United States person, is aiding, abetting, or conspiring with others in international terrorism. [ ]<sup>3</sup> The FISA court authorized the surveillance, but imposed certain restrictions, which the government contends are neither mandated nor authorized by FISA. Particularly, the court ordered that

law enforcement officials shall not make recommendations to intelligence officials concerning the initiation, operation, continuation or expansion of FISA searches or surveillances. Additionally, the FBI and the Criminal Division [of the Department of Justice] shall ensure that law enforcement officials do not direct or control the use of the FISA procedures to enhance criminal prosecution, and that advice intended to preserve the option of a criminal prosecution does not inadvertently result in the Criminal Division's directing or controlling the investigation using FISA searches and surveillances toward law enforcement objectives.

To ensure the Justice Department followed these strictures the court also fashioned what the government refers to as a "chaperone requirement"; that a unit of the Justice Department, the Office of Intelligence Policy and Review (OIPR) (composed of 31 lawyers and 25 support staff), "be invited" to all meetings between the FBI and the Criminal Division involving consultations for the purpose of co-

<sup>1</sup>Joining the ACLU on its brief are the Center for Democracy and Technology, Center for National Security Studies, Electronic Privacy Information Center, and Electronic Frontier Foundation.

<sup>2</sup>Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (Oct. 26, 2001).

<sup>3</sup>The bracketed information is classified and has been redacted from the public version of this opinion.

ordinating efforts “to investigate or protect against foreign attack or other grave hostile acts, sabotage, international terrorism, or clandestine intelligence activities by foreign powers or their agents.” If representatives of OIPR are unable to attend such meetings, “OIPR shall be apprized of the substance of the meetings forthwith in writing so that the Court may be notified at the earliest opportunity.”

These restrictions are not original to the order appealed.<sup>4</sup> They are actually set forth in an opinion written by the former Presiding Judge of the FISA court on May 17 of this year. But since that opinion did not accompany an order conditioning an approval of an electronic surveillance application it was not appealed. It is, however, the basic decision before us and it is its rationale that the government challenges. The opinion was issued after an oral argument before all of the then-serving FISA district judges and clearly represents the views of all those judges.<sup>5</sup>

We think it fair to say, however, that the May 17 opinion of the FISA court does not clearly set forth the basis for its decision. It appears to proceed from the assumption that FISA constructed a barrier between counterintelligence/intelligence officials and law enforcement officers in the Executive Branch—indeed, it uses the word “wall” popularized by certain commentators (and journalists) to describe that supposed barrier. Yet the opinion does not support that assumption with any relevant language from the statute.

The “wall” emerges from the court’s implicit interpretation of FISA. The court apparently believes it can approve applications for electronic surveillance only if the government’s objective is *not* primarily directed toward criminal prosecution of the foreign agents for their foreign intelligence activity. But the court neither refers to any FISA language supporting that view, nor does it reference the Patriot Act amendments, which the government contends specifically altered FISA to make clear that an application could be obtained even if criminal prosecution is the primary counter mechanism.

Instead the court relied for its imposition of the disputed restrictions on its statutory authority to approve “minimization procedures” designed to prevent the acquisition, retention, and dissemination within the government of material gathered in an electronic surveillance that is unnecessary to the government’s need for foreign intelligence information. 50 U.S.C. §1801(h).

### ***Jurisdiction***

This court has authority “to review the denial of any application” under FISA. *Id.* §1803(b). The FISA court’s order is styled as a grant of the application “as modified.” It seems obvious, however, that the FISA court’s order actually denied the application to the extent it rejected a significant portion of the government’s proposed minimization procedures and imposed restrictions on Department

<sup>4</sup>To be precise, there are two surveillance orders on appeal, one renewing the other with identical conditions.

<sup>5</sup>The argument before all of the district judges, some of whose terms have since expired, was referred to as an “en banc” although the statute does not contemplate such a proceeding. In fact, it specifically provides that if one judge declines to approve an application the government may not seek approval from another district judge, but only appeal to the Court of Review. 50 U.S.C. §§ 1803(a), (b).

of Justice investigations that the government opposes. Indeed, the FISA court was clear in rejecting a portion of the application. Under these circumstances, we have jurisdiction to review the FISA court's order; to conclude otherwise would elevate form over substance and deprive the government of judicial review of the minimization procedures imposed by the FISA court. *See Mobile Comm. Corp. v. FCC*, 77 F.3d 1399, 1403–04 (D.C. Cir.) (grant of station license subject to condition that is unacceptable to applicant is subject to judicial review under statute that permits such review when application for license is denied), *cert. denied*, 519 U.S. 823 (1996).

## II.

The government makes two main arguments. The first, it must be noted, was not presented to the FISA court; indeed, insofar as we can determine it has never previously been advanced either before a court or Congress.<sup>6</sup> That argument is that the supposed pre-Patriot Act limitation in FISA that restricts the government's intention to use foreign intelligence information in criminal prosecutions is an illusion; it finds no support in either the language of FISA or its legislative history. The government does recognize that several courts of appeals, while upholding the use of FISA surveillances, have opined that FISA may be used only if the government's primary purpose in pursuing foreign intelligence information is not criminal prosecution, but the government argues that those decisions, which did not carefully analyze the statute, were incorrect in their statements, if not incorrect in their holdings.

Alternatively, the government contends that even if the primary purpose test was a legitimate construction of FISA prior to the passage of the Patriot Act, that Act's amendments to FISA eliminate that concept. And as a corollary, the government insists the FISA court's construction of the minimization procedures is far off the mark both because it is a misconstruction of those provisions *per se*, as well as an end run around the specific amendments in the Patriot Act designed to deal with the real issue underlying this case. The government, moreover, contends that the FISA court's restrictions, which the court described as minimization procedures, are so intrusive into the operation of the Department of Justice as to exceed the constitutional authority of Article III judges.

The government's brief, and its supplementary brief requested by this court, also set forth its view that the primary purpose test is not required by the Fourth Amendment. The ACLU and NACDL argue, *inter alia*, the contrary; that the statutes are unconstitutional unless they are construed as prohibiting the government from obtaining approval of an application under FISA if its "primary purpose" is criminal prosecution.

### ***The 1978 FISA***

<sup>6</sup>Since proceedings before the FISA court and the Court of Review are *ex parte*-not adversary-we can entertain an argument supporting the government's position not presented to the lower court.

We turn first to the statute as enacted in 1978.<sup>7</sup> It authorizes a judge on the FISA court to grant an application for an order approving electronic surveillance to “obtain foreign intelligence information” if “there is probable cause to believe that . . . the target of the electronic surveillance is a foreign power or an agent of a foreign power,” and that “each of the facilities or places at which the surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power.” 50 U.S.C. § 1805(a)(3). As is apparent, the definitions of agent of a foreign power and foreign intelligence information are crucial to an understanding of the statutory scheme.<sup>8</sup> The later means

(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—

- A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
- B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or
- C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

*Id.* § 1801(e)(1).<sup>9</sup>

The definition of an agent of a foreign power, if it pertains to a U.S. person (which is the only category relevant to this case), is closely tied to criminal activity. The term includes any person who “knowingly engages in clandestine intelligence gathering activities . . . which activities involve or may involve a violation of the *criminal statutes* of the United States,” or “knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor.” *Id.* §§ 1801(b)(2)(A), (C) (emphasis added). International terrorism refers to activities that “involve violent acts or acts dangerous to human life that are a violation of the *criminal laws* of the United States or of any State, or that would be a *criminal violation* if committed within the jurisdiction of the United States or any State.” *Id.* § 1801(c)(1) (emphasis added). Sabotage means activities that “involve a violation of chapter 105 of [the criminal code], or that would involve such a violation if committed against the United States.” *Id.* § 1801(d). For purposes of clarity in this opinion we will refer to the crimes referred to in section 1801(a)–(e) as foreign intelligence crimes.<sup>10</sup>

<sup>7</sup>As originally enacted, FISA covered only electronic surveillance. It was amended in 1994 to cover physical searches. Pub. L. No. 103-359, 108 Stat. 3444 (Oct. 14, 1994). Although only electronic surveillance is at issue here, much of our statutory analysis applies to FISA’s provisions regarding physical searches, 50 U.S.C. §§ 1821-1829, which mirror to a great extent those regarding electronic surveillance.

<sup>8</sup>Foreign power is defined broadly to include, *inter alia*, “a group engaged in international terrorism or activities in preparation therefor” and “a foreign-based political organization, not substantially composed of United States persons.” 50 U.S.C. §§ 1801(a)(4), (5).

<sup>9</sup>A second definition of foreign intelligence information includes information necessary to “the national defense or the security of the United States,” or “the conduct of the foreign affairs of the United States.” 50 U.S.C. § 1801(e)(2). This definition generally involves information referred to as “affirmative” or “positive” foreign intelligence information rather than the “protective” or “counterintelligence” information at issue here.

<sup>10</sup>Under the current version of FISA, the definition of “agent of a foreign power” also includes U.S. persons who enter the United States under a false or fraudulent identity for or on behalf of a foreign power. Our term “foreign intelligence crimes” includes this fraudulent conduct, which will almost always involve a crime.

In light of these definitions, it is quite puzzling that the Justice Department, at some point during the 1980s, began to read the statute as limiting the Department's ability to obtain FISA orders if it intended to prosecute the targeted agents—even for foreign intelligence crimes. To be sure, section 1804, which sets forth the elements of an application for an order, required a national security official in the Executive Branch—typically the Director of the FBI—to certify that “the purpose” of the surveillance is to obtain foreign intelligence information (amended by the Patriot Act to read “a significant purpose”). But as the government now argues, the definition of foreign intelligence information includes evidence of crimes such as espionage, sabotage or terrorism. Indeed, it is virtually impossible to read the 1978 FISA to exclude from its purpose the prosecution of foreign intelligence crimes, most importantly because, as we have noted, the definition of an agent of a foreign power—if he or she is a U.S. person—is grounded on criminal conduct.

It does not seem that FISA, at least as originally enacted, even contemplated that the FISA court would inquire into the government's purpose in seeking foreign intelligence information. Section 1805, governing the standards a FISA court judge is to use in determining whether to grant a surveillance order, requires the judge to find that

the application which has been filed contains all statements and certifications required by section 1804 of this title and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1804(a)(7)(E) of this title and any other information furnished under section 1804(d) of this title.

50 U.S.C. § 1805(a)(5).<sup>11</sup> And section 1804(a)(7)(E) requires that the application include “a statement of the basis of the certification that—(i) the information sought is the type of foreign intelligence information designated; and (ii) such information cannot reasonably be obtained by normal investigative techniques.” That language certainly suggests that, aside from the probable cause, identification of facilities, and minimization procedures the judge is to determine and approve (also set forth in section 1805), the only other issues are whether electronic surveillance is necessary to obtain the information and whether the information sought is actually foreign intelligence information—not the government's proposed use of that information.<sup>12</sup>

Nor does the legislative history cast doubt on the obvious reading of the statutory language that foreign intelligence information

<sup>11</sup> Section 1804(d) simply provides that “[t]he judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1805 of this title.”

<sup>12</sup> At oral argument before the FISA judges, the court asked government counsel whether a companion provision of FISA, section 1822(c), that gives the court *jurisdiction* over physical searches “for the purpose of obtaining foreign intelligence information,” obliged the court to consider the government's “primary purpose.” We think that language points in the opposite direction since it would be more than a little strange for Congress to require a court to make a searching inquiry into the investigative background of a FISA application before concluding the court had jurisdiction over the application.

includes evidence of foreign intelligence crimes. To the contrary, the House Report explained:

[T]he term “foreign intelligence information,” especially as defined in subparagraphs (e)(1)(B) and (e)(1)(C), *can include evidence of certain crimes* relating to sabotage, international terrorism, or clandestine intelligence activities. With respect to information concerning U.S. persons, foreign intelligence information includes information necessary to protect against clandestine intelligence activities of foreign powers or their agents. Information about a spy’s espionage activities obviously is within this definition, and it is *most likely at the same time evidence of criminal activities*.

H.R. REP. NO. 95–1283 (hereinafter “H. Rep.”) at 49 (1978) (emphasis added).

The government argues persuasively that arresting and prosecuting terrorist agents of, or spies for, a foreign power may well be the best technique to prevent them from successfully continuing their terrorist or espionage activity. The government might wish to surveil the agent for some period of time to discover other participants in a conspiracy or to uncover a foreign power’s plans, but typically at some point the government would wish to apprehend the agent and it might be that only a prosecution would provide sufficient incentives for the agent to cooperate with the government. Indeed, the threat of prosecution might be sufficient to “turn the agent.” It would seem that the Congress actually anticipated the government’s argument and explicitly approved it. The House Report said:

*How this information may be used* “to protect” against clandestine intelligence activities is not prescribed by the definition of foreign intelligence information, although, of course, how it is used may be affected by minimization procedures . . . . And no information acquired pursuant to this bill could be used for other than lawful purposes . . . . *Obviously, use of “foreign intelligence information” as evidenced in a criminal trial is one way the Government can lawfully protect against clandestine intelligence activities, sabotage, and international terrorism.* The bill, therefore, explicitly recognizes that information which is evidence of crimes involving [these activities] can be sought, retained, and used pursuant to this bill.

Id. (emphasis added). The Senate Report is on all fours:

U.S. persons may be authorized targets, and the surveillance is part of an investigative process often designed to protect against the commission of serious crimes such as espionage, sabotage, assassination, kidnaping, and terrorist acts committed by or on behalf of foreign powers. *Intelligence and criminal law enforcement tend to merge in this area. . . .* [S]urveillances conducted under [FISA] need not stop once conclusive evidence of a crime is obtained, but instead may be extended longer where protective measures other than arrest and prosecution are more appropriate.

S. REP. NO. 95-701 (hereinafter “S. Rep.”) at 10-11 (1978) (emphasis added).

Congress was concerned about the government’s use of FISA surveillance to obtain information not truly intertwined with the government’s efforts to protect against threats from foreign powers. Accordingly, the certification of purpose under section 1804(a)(7)(B) served to

prevent the practice of targeting, for example, a foreign power for electronic surveillance when the true purpose of the surveillance is to gather information about an individual for other than foreign intelligence purposes. It is also designed to make explicit that the sole purpose of such surveillance is to secure “foreign intelligence information,” as defined, and not to obtain some other type of information.

H. REP. at 76; *see also* S. REP. at 51. But Congress did not impose any restrictions on the government’s use of the foreign intelligence information to prosecute agents of foreign powers for foreign intelligence crimes. Admittedly, the House, at least in one statement, noted that FISA surveillances “are not primarily for the purpose of gathering evidence of a crime. They are to obtain foreign intelligence information, which when it concerns United States persons must be necessary to important national concerns.” H. REP. at 36. That, however, was an observation, not a proscription. And the House as well as the Senate made clear that prosecution is one way to combat foreign intelligence crimes. *See id.*; S. REP. at 10-11.

The origin of what the government refers to as the false dichotomy between foreign intelligence information that is evidence of foreign intelligence crimes and that which is not appears to have been a Fourth Circuit case decided in 1980. *United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980). That case, however, involved an electronic surveillance carried out prior to the passage of FISA and predicated on the President’s executive power. In approving the district court’s exclusion of evidence obtained through a warrantless surveillance subsequent to the point in time when the government’s investigation became “primarily” driven by law enforcement objectives, the court held that the Executive Branch should be excused from securing a warrant only when “the object of the search or the surveillance is a foreign power, its agents or collaborators,” and “the surveillance is conducted ‘primarily’ for foreign intelligence reasons.” *Id.* at 915. Targets must “receive the protection of the warrant requirement if the government is primarily attempting to put together a criminal prosecution.” *Id.* at 916. Although the *Truong* court acknowledged that “almost all foreign intelligence investigations are in part criminal” ones, it rejected the government’s assertion that “if surveillance is to any degree directed at gathering foreign intelligence, the executive may ignore the warrant requirement of the Fourth Amendment.” *Id.* at 915.

Several circuits have followed *Truong* in applying similar versions of the “primary purpose” test, despite the fact that *Truong* was not a FISA decision. (It was an interpretation of the Constitution, in the context of measuring the boundaries of the President’s

inherent executive authority, and we discuss *Truong's* constitutional analysis at length in Section III of this opinion.) In one of the first major challenges to a FISA search, *United States v. Megahey*, 553 F. Supp. 1180 (E.D.N.Y. 1982), *aff'd sub nom. United States v. Duggan*, 743 F.2d 59 (2d Cir. 1984), the district court acknowledged that while Congress clearly viewed arrest and prosecution as one of the possible outcomes of a FISA investigation, surveillance under FISA would nevertheless be “appropriate only if foreign intelligence surveillance is the Government’s primary purpose.” *Id.* at 1189–90. Six months earlier, another judge in the same district had held that the *Truong* analysis did not govern FISA cases, since a FISA order was a warrant that met Fourth Amendment standards. *United States v. Falvey*, 540 F. Supp. 1306, 1314 (E.D.N.Y. 1982). *Falvey*, however, was apparently not appealed and *Megahey* was. The Second Circuit, without reference to *Falvey*, and importantly in the context of affirming the conviction, approved *Megahey's* finding that the surveillance was not “directed towards criminal investigation or the institution of a criminal prosecution.” *Duggan*, 743 F.2d at 78 (quoting *Megahey*, 553 F. Supp. at 1190). Implicitly then, the Second Circuit endorsed the *Megahey* dichotomy. Two other circuits, the Fourth and the Eleventh, have similarly approved district court findings that a surveillance was primarily for foreign intelligence purposes without any discussion—or need to discuss—the validity of the dichotomy. See *United States v. Pelton*, 835 F.2d 1067, 1075–76 (4th Cir. 1987), *cert. denied*, 486 U.S. 1010 (1988); *United States v. Badia*, 827 F.2d 1458, 1464 (11th Cir. 1987), *cert. denied*, 485 U.S. 937 (1988).

Then, the First Circuit, seeing *Duggan* as following *Truong*, explicitly interpreted FISA’s purpose wording in section 1804(a)(7)(B) to mean that “[a]lthough evidence obtained under FISA subsequently may be used in criminal prosecutions, the investigation of criminal activity cannot be the primary purpose of the surveillance.” *United States v. Johnson*, 952 F.2d 565, 572 (1st Cir. 1991) (citations omitted), *cert. denied*, 506 U.S. 816 (1992). Notably, however, the Ninth Circuit has refused

to draw too fine a distinction between criminal and intelligence investigations. “International terrorism,” by definition, requires the investigation of activities that constitute crimes. That the government may later choose to prosecute is irrelevant. . . . FISA is meant to take into account “[t]he differences between ordinary criminal investigations to gather evidence of specific crimes and foreign counterintelligence investigations to uncover and monitor clandestine activities . . . .”

*United States v. Sarkissian*, 841 F.2d 959, 964 (9th Cir. 1988) (citations omitted).

Neither *Duggan* nor *Johnson* tied the “primary purpose” test to actual statutory language. In *Duggan* the court stated that “[t]he requirement that foreign intelligence information be the primary objective of the surveillance is plain,” and the district court was correct in “finding that ‘the purpose of the surveillance in this case, both initially and throughout, was to secure foreign intelligence information and was not, as [the] defendants assert, directed towards criminal investigation or the institution of a criminal prosecution.’”

*Duggan*, 743 F.2d at 77–78 (quoting *Megahey*, 553 F. Supp. at 1190).<sup>13</sup> Yet the court never explained why it apparently read foreign intelligence information to exclude evidence of crimes—endorsing the district court’s implied dichotomy—when the statute’s definitions of foreign intelligence and foreign agent are actually cast in terms of criminal conduct. (It will be recalled that the type of foreign intelligence with which we are concerned is really counterintelligence, *see supra* note 9.) And *Johnson* did not even focus on the phrase “foreign intelligence information” in its interpretation of the “purpose” language in section 1804(a)(7)(B). *Johnson*, 952 F.2d at 572.

It is almost as if *Duggan*, and particularly *Johnson*, assume that the government seeks foreign intelligence information (counterintelligence) for its own sake—to expand its pool of knowledge—because there is no discussion of how the government would use that information outside criminal prosecutions. That is not to say that the government could have no other use for that information. The government’s overriding concern is to stop or frustrate the agent’s or the foreign power’s activity by any means, but if one considers the actual ways in which the government would foil espionage or terrorism it becomes apparent that criminal prosecution analytically cannot be placed easily in a separate response category. It may well be that the government itself, in an effort to conform to district court holdings, accepted the dichotomy it now contends is false. Be that as it may, since the cases that “adopt” the dichotomy do affirm district court opinions permitting the introduction of evidence gathered under a FISA order, there was not much need for the courts to focus on the issue with which we are confronted.

In sum, we think that the FISA as passed by Congress in 1978 clearly did *not* preclude or limit the government’s use or proposed use of foreign intelligence information, which included evidence of certain kinds of criminal activity, in a criminal prosecution. In order to understand the FISA court’s decision, however, it is necessary to trace developments and understandings within the Justice Department post-*Truong* as well as after the passage of the Patriot Act. As we have noted, some time in the 1980s—the exact moment is shrouded in historical mist—the Department applied the *Truong* analysis to an interpretation of the FISA statute. What is clear is that in 1995 the Attorney General adopted “Procedures for Contacts Between the FBI and the Criminal Division Concerning Foreign Intelligence and Foreign Counterintelligence Investigations.”

Apparently to avoid running afoul of the primary purpose test used by some courts, the 1995 Procedures limited contacts between the FBI and the Criminal Division in cases where FISA surveillance or searches were being conducted by the FBI for foreign intelligence (FI) or foreign counterintelligence (FCI) purposes.<sup>14</sup> The

<sup>13</sup>Interestingly, the court noted that the FISA judge “is not to second guess the Executive Branch official’s certification that the objective of the surveillance is foreign intelligence information.” *Duggan*, 743 F.2d at 77.

<sup>14</sup>We certainly understand the 1995 Justice Department’s effort to avoid difficulty with the FISA court, or other courts; and we have no basis to criticize any organization of the Justice Department that an Attorney General desires.

procedures state that “the FBI and Criminal Division should ensure that advice intended to preserve the option of a criminal prosecution does not inadvertently result in either the fact or the appearance of the Criminal Division’s *directing or controlling* the FI or FCI investigation toward law enforcement objectives.” 1995 Procedures at 2, ¶ 6 (emphasis added). Although these procedures provided for significant information sharing and coordination between criminal and FI or FCI investigations, based at least in part on the “directing or controlling” language, they eventually came to be narrowly interpreted within the Department of Justice, and most particularly by OIPR, as requiring OIPR to act as a “wall” to prevent the FBI intelligence officials from communicating with the Criminal Division regarding ongoing FI or FCI investigations. See *Final Report of the Attorney General’s Review Team on the Handling of the Los Alamos National Laboratory Investigation* (AGRT Report), Chapter 20 at 721–34 (May 2000). Thus, the focus became the nature of the underlying investigation, rather than the general purpose of the surveillance. Once prosecution of the target was being considered, the procedures, as interpreted by OIPR in light of the case law, prevented the Criminal Division from providing any meaningful advice to the FBI. *Id.*

The Department’s attitude changed somewhat after the May 2000 report by the Attorney General and a July 2001 Report by the General Accounting Office both concluded that the Department’s concern over how the FISA court or other federal courts might interpret the primary purpose test has inhibited necessary coordination between intelligence and law enforcement officials. See *id.* at 721–34;<sup>15</sup> General Accounting Office, *FBI Intelligence Investigations: Coordination Within Justice on Counterintelligence Criminal Matters is Limited* (July 2001) (GAO–01–780) (GAO Report) at 3. The AGRT Report also concluded, based on the text of FISA and its legislative history, that not only should the purpose of the investigation not be inquired into by the courts, but also that Congress affirmatively anticipated that the underlying investigation might well have a criminal as well as foreign counterintelligence objective. AGRT Report at 737. In response to the AGRT Report, the Attorney General, in January 2000, issued additional, interim procedures designed to address coordination problems identified in that report. In August 2001, the Deputy Attorney General issued a memorandum clarifying Department of Justice policy governing intelligence sharing and establishing additional requirements. (These actions, however, did not replace the 1995 Procedures.) But it does not appear that the Department thought of these internal procedures as “minimization procedures” required under FISA.<sup>16</sup> Nevertheless, the FISA court was aware that the procedures were

<sup>15</sup> According to the Report, within the Department the primary proponent of procedures that cordoned off criminal investigators and prosecutors from those officers with counterintelligence responsibilities was the deputy counsel of OIPR. See AGRT Report at 714 & n.949. He was subsequently transferred from that position and made a senior counsel. He left the Department and became the Legal Advisor to the FISA court.

<sup>16</sup> There are other detailed, classified procedures governing the acquisition, retention, and dissemination of foreign intelligence and non-foreign intelligence information that have been submitted to and approved by the FISA court as “minimization procedures.” Those classified minimization procedures are not at issue here.

being followed by the Department and apparently adopted elements of them in certain cases.

***The Patriot Act and the FISA Court's Decision***

The passage of the Patriot Act altered and to some degree muddied the landscape. In October 2001, Congress amended FISA to change “the purpose” language in 1804(a)(7)(B) to “a significant purpose.” It also added a provision allowing “Federal officers who conduct electronic surveillance to acquire foreign intelligence information” to “consult with Federal law enforcement officers to coordinate efforts to investigate or protect against” attack or other grave hostile acts, sabotage or international terrorism, or clandestine intelligence activities, by foreign powers or their agents. 50 U.S.C. § 1806(k)(1). And such coordination “shall not preclude” the government’s certification that a significant purpose of the surveillance is to obtain foreign intelligence information, or the issuance of an order authorizing the surveillance. *Id.* § 1806(k)(2). Although the Patriot Act amendments to FISA expressly sanctioned consultation and coordination between intelligence and law enforcement officials, in response to the first applications filed by OIPR under those amendments, in November 2001, the FISA court for the first time adopted the 1995 Procedures, as augmented by the January 2000 and August 2001 Procedures, as “minimization procedures” to apply in all cases before the court.<sup>17</sup>

The Attorney General interpreted the Patriot Act quite differently. On March 6, 2002, the Attorney General approved new “Intelligence Sharing Procedures” to implement the Act’s amendments to FISA. The 2002 Procedures supersede prior procedures and were designed to permit the complete exchange of information and advice between intelligence and law enforcement officials. They eliminated the “direction and control” test and allowed the exchange of advice between the FBI, OIPR, and the Criminal Division regarding “the initiation, operation, continuation, or expansion of FISA searches or surveillance.” On March 7, 2002, the government filed a motion with the FISA court, noting that the Department of Justice had adopted the 2002 Procedures and proposing to follow those procedures in all matters before the court. The government also asked the FISA court to vacate its orders adopting the prior procedures as minimization procedures in all cases and imposing special “wall” procedures in certain cases.

Unpersuaded by the Attorney General’s interpretation of the Patriot Act, the court ordered that the 2002 Procedures be adopted, *with modifications*, as minimization procedures to apply in all cases. The court emphasized that the definition of minimization procedures had not been amended by the Patriot Act, and reasoned that the 2002 Procedures “cannot be used by the government to amend the Act in ways Congress has not.” The court explained:

Given our experience in FISA surveillances and searches, we find that these provisions in sections II.B and III [of the 2002 Procedures], particularly those which authorize criminal pros-

<sup>17</sup>In particular, the court adopted Part A of the 1995 Procedures, which covers “Contacts During an FI or FCI Investigation in which FISA Surveillance or Searches are being Conducted.” The remainder of the 1995 Procedures addresses contacts in cases where FISA is not at issue.

ecutors to advise FBI intelligence officials on the initiation, operation, continuation or expansion of FISA's intrusive seizures, are designed to enhance the acquisition, retention and dissemination of *evidence for law enforcement purposes, instead of being consistent with the need of the United States to "obtain, produce, and disseminate foreign intelligence information" . . . as mandated in § 1801(h) and § 1821(4).*

May 17, 2001 Opinion at 22 (emphasis added by the FISA court).<sup>18</sup> The FISA court also adopted a new rule of court procedure, Rule 11, which provides that "[a]ll FISA applications shall include informative descriptions of any ongoing criminal investigations of FISA targets, as well as the substance of any consultations between the FBI and criminal prosecutors at the Department of Justice or a United States Attorney's Office."

Undeterred, the government submitted the application at issue in this appeal on July 19, 2002, and expressly proposed using the 2002 Procedures *without modification*. In an order issued the same day, the FISA judge hearing the application granted an order for surveillance of the target but modified the 2002 Procedures consistent with the court's May 17, 2002 *en banc* order. It is the July 19, 2002 order that the government appeals, along with an October 17, 2002 order granting, with the same modifications as the July 19 order, the government's application for renewal of the surveillance in this case. Because those orders incorporate the May 17, 2002 order and opinion by reference, however, that order and opinion are before us as well.

\* \* \* \* \*

Essentially, the FISA court took portions of the Attorney General's augmented 1995 Procedures—adopted to deal with the primary purpose standard—and imposed them generically as minimization procedures. In doing so, the FISA court erred. It did not provide any constitutional basis for its action—we think there is none—and misconstrued the main statutory provision on which it relied. The court mistakenly categorized the augmented 1995 Procedures as FISA minimization procedures and then compelled the government to utilize a modified version of those procedures in a way that is clearly inconsistent with the statutory purpose.

Under section 1805 of FISA, "the judge shall enter an *ex parte* order as requested or as modified approving the electronic surveillance if he finds that . . . the proposed minimization procedures meet the definition of minimization procedures under section 1801(h) of this title." 50 U.S.C. § 1805(a)(4). The statute defines minimization procedures in pertinent part as:

<sup>18</sup>In describing its experience with FISA searches and surveillance, the FISA court's opinion makes reference to certain applications each of which contained an FBI agent's affidavit that was inaccurate, particularly with respect to assertions regarding the information shared with criminal investigators and prosecutors. Although we do not approve any misrepresentations that may have taken place, our understanding is that those affidavits were submitted during 1997 through early 2001, and therefore any inaccuracies may have been caused in part by the confusion within the Department of Justice over implementation of the 1995 Procedures, as augmented in January 2000. In any event, while the issue of the candor of the FBI agent(s) involved properly remains under investigation by the Department of Justice's Office of Professional Responsibility, the issue whether the wall between the FBI and the Criminal Division required by the FISA court has been maintained is moot in light of this court's opinion.

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1) of this section, shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance.

Section 1801(h) also contains the following proviso:

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes. . . .

*Id.* § 1801(h).

As is evident from the face of section 1801(h), minimization procedures are designed to protect, as far as reasonable, against the acquisition, retention, and dissemination of nonpublic information which is not foreign intelligence information. If the data is not foreign intelligence information as defined by the statute, the procedures are to ensure that the government does not use the information to identify the target or third party, unless such identification is necessary to properly understand or assess the foreign intelligence information that is collected. *Id.* § 1801(h)(2). By minimizing *acquisition*, Congress envisioned that, for example, "where a switchboard line is tapped but only one person in the organization is the target, the interception should probably be discontinued where the target is not a party" to the communication. H. REP. at 55–56. By minimizing *retention*, Congress intended that "information acquired, which is not necessary for obtaining[,] producing, or disseminating foreign intelligence information, be destroyed where feasible." H. REP. at 56. Furthermore, "[e]ven with respect to information needed for an approved purpose, *dissemination* should be restricted to those officials with a need for such information." *Id.* (emphasis added).

The minimization procedures allow, however, the retention and dissemination of nonforeign intelligence information which is evidence of *ordinary crimes* for preventative or prosecutorial purposes. *See* 50 U.S.C. § 1801(h)(3). Therefore, if through interceptions or searches, evidence of "a serious crime totally unrelated to intelligence matters" is incidentally acquired, the evidence is "*not* . . . required to be destroyed." H. REP. at 62 (emphasis added). As we have explained, under the 1978 Act, "evidence of certain crimes like espionage would itself constitute 'foreign intelligence information,' as defined, because it is necessary to protect against clandestine intelligence activities by foreign powers or their agents." H. REP. at 62; *see also id.* at 49. In light of these purposes of the

minimization procedures, there is simply no basis for the FISA court's reliance on section 1801(h) to limit criminal prosecutors' ability to advise FBI intelligence officials on the initiation, operation, continuation, or expansion of FISA surveillances to obtain foreign intelligence information, even if such information includes evidence of a foreign intelligence crime.

The FISA court's decision and order not only misinterpreted and misapplied minimization procedures it was entitled to impose, but as the government argues persuasively, the FISA court may well have exceeded the constitutional bounds that restrict an Article III court. The FISA court asserted authority to govern the internal organization and investigative procedures of the Department of Justice which are the province of the Executive Branch (Article II) and the Congress (Article I). Subject to statutes dealing with the organization of the Justice Department, however, the Attorney General has the responsibility to determine how to deploy personnel resources. As the Supreme Court said in *Morrison v. Olson* in cautioning the Special Division of the D.C. Circuit to avoid unauthorized administrative guidance of Independent Counsel, "[t]he gradual expansion of the authority of the Special Division might in another context be a bureaucratic success story, but it would be one that would have serious constitutional ramifications." 487 U.S. 654, 684 (1988).<sup>19</sup>

\* \* \* \* \*

We also think the refusal by the FISA court to consider the legal significance of the Patriot Act's crucial amendments was error. The government, in order to avoid the requirement of meeting the "primary purpose" test, specifically sought an amendment to section 1804(a)(7)(B) which had required a certification "that the purpose of the surveillance is to obtain foreign intelligence information" so as to delete the article "the" before "purpose" and replace it with "a." The government made perfectly clear to Congress why it sought the legislative change. Congress, although accepting the government's explanation for the need for the amendment, adopted language which it perceived as not giving the government quite the degree of modification it wanted. Accordingly, section 1804(a)(7)(B)'s wording became "that a *significant* purpose of the surveillance is to obtain foreign intelligence information" (emphasis added). There is simply no question, however, that Congress was keenly aware that this amendment relaxed a requirement that the government show that its primary purpose was other than criminal prosecution.

No committee reports accompanied the Patriot Act but the floor statements make congressional intent quite apparent. The Senate Judiciary Committee Chairman Senator Leahy acknowledged that "[p]rotection against these foreign-based threats by any lawful means is within the scope of the definition of 'foreign intel-

<sup>19</sup>In light of *Morrison v. Olson* and *Mistretta v. United States*, 488 U.S. 361 (1989), we do not think there is much left to an argument made by an opponent of FISA in 1978 that the statutory responsibilities of the FISA court are inconsistent with Article III case and controversy responsibilities of federal judges because of the secret, non-adversary process. See *Foreign Intelligence Electronic Surveillance: Hearings on H.R. 5794, 9745, 7308, and 5632 Before the Subcomm. on Legislation of the Permanent Select Comm. on Intelligence*, 95th Cong., 2d Sess. 221 (1978) (statement of Laurence H. Silberman).

ligence information,' and the use of FISA to gather evidence for the enforcement of these laws was contemplated in the enactment of FISA." 147 Cong. Rec. S11004 (Oct. 25, 2001). "This bill . . . break[s] down traditional barriers between law enforcement and foreign intelligence. This is not done just to combat international terrorism, but for any criminal investigation that overlaps a broad definition of 'foreign intelligence.'" 147 Cong. Rec. S10992 (Oct. 25, 2001) (statement of Sen. Leahy). And Senator Feinstein, a "strong support[er]," was also explicit. The ultimate objective was to make it

easier to collect foreign intelligence information under the Foreign Intelligence Surveillance Act, FISA. Under current law, authorities can proceed with surveillance under FISA only if the primary purpose of the investigation is to collect foreign intelligence.

But in today's world things are not so simple. In many cases, surveillance will have two key goals—the gathering of foreign intelligence, and the gathering of evidence for a criminal prosecution. Determining which purpose is the "primary" purpose of the investigation can be difficult, and will only become more so as we coordinate our intelligence and law enforcement efforts in the war against terror.

Rather than forcing law enforcement to decide which purpose is primary—law enforcement or foreign intelligence gathering, this bill strikes a new balance. It will now require that a "significant" purpose of the investigation must be foreign intelligence gathering to proceed with surveillance under FISA.

The effect of this provision will be to make it easier for law enforcement to obtain a FISA search or surveillance warrant for those cases where the subject of the surveillance is both a potential source of valuable intelligence and the potential target of a criminal prosecution. Many of the individuals involved in supporting the September 11 attacks may well fall into both of these categories.

147 Cong. Rec. S10591 (Oct. 11, 2001).

To be sure, some Senate Judiciary Committee members including the Chairman were concerned that the amendment might grant too much authority to the Justice Department—and the FISA court. Senator Leahy indicated that the change to significant purpose was "very problematic" since it would "make it easier for the FBI to use a FISA wiretap to obtain information where the Government's most important motivation for the wiretap is for use in a criminal prosecution." 147 Cong. Rec. S10593 (Oct. 11, 2001). Therefore he suggested that "it will be up to the courts to determine how far law enforcement agencies may use FISA for criminal investigation and prosecution beyond the scope of the statutory definition of 'foreign intelligence information.'" 147 Cong. Rec. S11004 (Oct. 25, 2001) (emphasis added). But the only dissenting vote against the act was cast by Senator Feingold. *For the Record: Senate Votes*, 59 CONG. QUARTERLY (WKLY.) 39, Oct. 13, 2001, at 2425. Senator Feingold recognized that the change to "significant

purpose” meant that the government could obtain a FISA warrant “even if the primary purpose is a criminal investigation,” and was concerned that this development would not respect the protections of the Fourth Amendment. 147 Cong. Rec. S11021 (Oct. 25, 2001).

In sum, there can be no doubt as to Congress’ intent in amending section 1804(a)(7)(B). Indeed, it went further to emphasize its purpose in breaking down barriers between criminal law enforcement and intelligence (or counterintelligence) gathering by adding section 1806(k):

(k) Consultation with Federal law enforcement officer

(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this title may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; or

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section [1804](a)(7)(B) of this title or the entry of an order under section [1805] of this title.

The FISA court noted this amendment but thought that Congress’ approval of consultations was not equivalent to authorizing law enforcement officers to give advice to officers who were conducting electronic surveillance nor did it sanction law enforcement officers “directing or controlling” surveillances. However, dictionary definitions of “consult” include giving advice. *See, e.g.*, OXFORD ENGLISH DICTIONARY ONLINE (2d ed. 1989). Beyond that, when Congress explicitly authorizes consultation and coordination between different offices in the government, without even suggesting a limitation on who is to direct and control, it necessarily implies that either could be taking the lead.

Neither *amicus* brief defends the reasoning of the FISA court. NACDL’s brief makes no attempt to interpret FISA or the Patriot Act amendments but rather argues the primary purpose test is constitutionally compelled. The ACLU relies on Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–2522, to interpret FISA, passed 10 years later. That technique, to put it gently, is hardly an orthodox method of statutory interpretation. FISA was passed to deal specifically with the subject of foreign intelligence surveillance. The ACLU does argue that Congress’ intent to preclude law enforcement officials initiating or controlling foreign intelligence investigations is revealed by FISA’s exclusion of the Attorney General—a law enforcement official—from the officers who can certify the foreign intelligence purpose of an application under section 1804. The difficulty with that argument is that the Attorney General supervises the Director of the FBI who is both a law enforcement and counterintelligence officer. The Attorney General or the Deputy Attorney General, moreover, must approve *all*

applications no matter who certifies that the information sought is foreign intelligence information. 50 U.S.C. § 1804(a).<sup>20</sup>

The ACLU insists that the significant purpose amendment only “clarified” the law permitting FISA surveillance orders “even if foreign intelligence is not its *exclusive* purpose” (emphasis added). In support of this rather strained interpretation, which ignores the legislative history of the Patriot Act, the ACLU relies on a *September 10, 2002* hearing of the Judiciary Committee (the day after the government’s oral presentation to this court) at which certain senators made statements—somewhat at odds with their floor statements prior to the passage of the Patriot Act—as to what they had intended the year before. The D.C. Circuit has described such post-enactment legislative statements as “legislative future” rather than legislative history, not entitled to authoritative weight. See *General Instrument Corp. v. FCC*, 213 F.3d 724, 733 (D.C. Cir. 2000).

Accordingly, the Patriot Act amendments clearly disapprove the primary purpose test. And as a matter of straightforward logic, if a FISA application can be granted even if “foreign intelligence” is only a significant—not a primary—purpose, another purpose can be primary. One other legitimate purpose that could exist is to prosecute a target for a foreign intelligence crime. We therefore believe the Patriot Act amply supports the government’s alternative argument but, paradoxically, the Patriot Act would seem to conflict with the government’s first argument because by using the term “significant purpose,” the Act now implies that another purpose is to be distinguished from a foreign intelligence purpose.

The government heroically tries to give the amended section 1804(a)(7)(B) a wholly benign interpretation. It concedes that “the ‘significant purpose’ amendment recognizes the *existence* of the dichotomy between foreign intelligence and law enforcement,” but it contends that “it cannot be said to recognize (or approve) its *legitimacy*.” Supp. Br. of U.S. at 25 (emphasis in original). We are not persuaded. The very letter the Justice Department sent to the Judiciary Committee in 2001 defending the constitutionality of the significant purpose language implicitly accepted as legitimate the dichotomy in FISA that the government now claims (and we agree) was false. It said, “it is also clear that while FISA states that ‘the’ purpose of a search is for foreign surveillance, that need not be the only purpose. Rather, law enforcement considerations can be taken into account, so long as the surveillance also has a legitimate foreign intelligence purpose.” The senatorial statements explaining the significant purpose amendments which we described above are all based on the same understanding of FISA which the Justice Department accepted—at least until this appeal. In short, even though we agree that the original FISA did not contemplate the “false dichotomy,” the Patriot Act actually did—which makes it no longer false. The addition of the word “significant” to section 1804(a)(7)(B) imposed a requirement that the government have a measurable foreign intelligence purpose, other than just criminal prosecution of even foreign intelligence crimes. Although section

<sup>20</sup> Furthermore, the Attorney General of Deputy Attorney General must approve the use in a criminal proceeding of information acquired pursuant to FISA. 50 U.S.C. 1806(b).

1805(a)(5), as we discussed above, may well have been intended to authorize the FISA court to review only the question whether the information sought was a type of foreign intelligence information, in light of the significant purpose amendment of section 1804 it seems section 1805 must be interpreted as giving the FISA court the authority to review the government's purpose in seeking the information.

That leaves us with something of an analytic conundrum. On the one hand, Congress did not amend the definition of foreign intelligence information which, we have explained, includes evidence of foreign intelligence crimes. On the other hand, Congress accepted the dichotomy between foreign intelligence and law enforcement by adopting the significant purpose test. Nevertheless, it is our task to do our best to read the statute to honor congressional intent. The better reading, it seems to us, excludes from the purpose of gaining foreign intelligence information a sole objective of criminal prosecution. We therefore reject the government's argument to the contrary. Yet this may not make much practical difference. Because, as the government points out, when it commences an electronic surveillance of a foreign agent, typically it will not have decided whether to prosecute the agent (whatever may be the subjective intent of the investigators or lawyers who initiate an investigation). So long as the government entertains a realistic option of dealing with the agent other than through criminal prosecution, it satisfies the significant purpose test.

The important point is—and here we agree with the government—the Patriot Act amendment, by using the word “significant,” eliminated any justification for the FISA court to balance the relative weight the government places on criminal prosecution as compared to other counterintelligence responses. If the certification of the application's purpose articulates a broader objective than criminal prosecution—such as stopping an ongoing conspiracy—and includes other potential non-prosecutorial responses, the government meets the statutory test. Of course, if the court concluded that the government's sole objective was merely to gain evidence of past criminal conduct—even foreign intelligence crimes—to punish the agent rather than halt ongoing espionage or terrorist activity, the application should be denied.

The government claims that even prosecutions of *non*-foreign intelligence crimes are consistent with a purpose of gaining foreign intelligence information so long as the government's objective is to stop espionage or terrorism by putting an agent of a foreign power in prison. That interpretation transgresses the original FISA. It will be recalled that Congress intended section 1804(a)(7)(B) to prevent the government from targeting a foreign agent when its “true purpose” was to gain non-foreign intelligence information—such as evidence of ordinary crimes or scandals. *See supra* at p.14. (If the government inadvertently came upon evidence of ordinary crimes, FISA provided for the transmission of that evidence to the proper authority. 50 U.S.C. §1801(h)(3).) It can be argued, however, that by providing that an application is to be granted if the government has only a “significant purpose” of gaining foreign intelligence information, the Patriot Act allows the government to have a primary objective of prosecuting an agent for a non-foreign intelligence

crime. Yet we think that would be an anomalous reading of the amendment. For we see not the slightest indication that Congress meant to give that power to the Executive Branch. Accordingly, the manifestation of such a purpose, it seems to us, would continue to disqualify an application. That is not to deny that ordinary crimes might be inextricably intertwined with foreign intelligence crimes. For example, if a group of international terrorists were to engage in bank robberies in order to finance the manufacture of a bomb, evidence of the bank robbery should be treated just as evidence of the terrorist act itself. But the FISA process cannot be used as a device to investigate wholly unrelated ordinary crimes.

One final point; we think the government's purpose as set forth in a section 1804(a)(7)(B) certification is to be judged by the national security official's articulation and not by a FISA court inquiry into the origins of an investigation nor an examination of the personnel involved. It is up to the Director of the FBI, who typically certifies, to determine the government's national security purpose, as approved by the Attorney General or Deputy Attorney General. This is not a standard whose application the FISA court legitimately reviews by seeking to inquire into which Justice Department officials were instigators of an investigation. All Justice Department officers—including those in the FBI—are under the control of the Attorney General. If he wishes a particular investigation to be run by an officer of any division, that is his prerogative. There is nothing in FISA or the Patriot Act that suggests otherwise. That means, perforce, if the FISA court has reason to doubt that the government has any real non-prosecutorial purpose in seeking foreign intelligence information it can demand further inquiry into the certifying officer's purpose—or perhaps even the Attorney General's or Deputy Attorney General's reasons for approval. The important point is that the relevant purpose is that of those senior officials in the Executive Branch who have the responsibility of appraising the government's national security needs.

### III.

Having determined that FISA, as amended, does not oblige the government to demonstrate to the FISA court that its primary purpose in conducting electronic surveillance is not criminal prosecution, we are obliged to consider whether the statute as amended is consistent with the Fourth Amendment. The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Although the FISA court did not explicitly rely on the Fourth Amendment, it at least suggested that this provision was the animating principle driving its statutory analysis. The FISA court indicated that its disapproval of the Attorney General's 2002 Proce-

dures was based on the need to safeguard the “privacy of Americans in these highly intrusive surveillances and searches,” which implies the invocation of the Fourth Amendment. The government, recognizing the Fourth Amendment’s shadow effect on the FISA court’s opinion, has affirmatively argued that FISA is constitutional. And some of the very senators who fashioned the Patriot Act amendments expected that the federal courts, including presumably the FISA court, would carefully consider that question. Senator Leahy believed that “[n]o matter what statutory change is made . . . the court may impose a constitutional requirement of ‘primary purpose’ based on the appellate court decisions upholding FISA against constitutional challenges over the past 20 years.” 147 Cong. Rec. S11003 (Oct. 25, 2001). Senator Edwards stated that “the FISA court will still need to be careful to enter FISA orders only when the requirements of the Constitution as well as the statute are satisfied.” 147 Cong. Rec. S10589 (Oct. 11, 2001).

We are, therefore, grateful to the ACLU and NACDL for their briefs that vigorously contest the government’s argument. Both the NACDL (which, as we have noted above, presents only the argument that the statute as amended is unconstitutional) and the ACLU rely on two propositions. The first is not actually argued; it is really an assumption—that a FISA order does not qualify as a warrant within the meaning of the Fourth Amendment. The second is that any government surveillance whose *primary purpose* is criminal prosecution of *whatever kind* is *per se* unreasonable if not based on a warrant.

The FISA court expressed concern that unless FISA were “construed” in the fashion that it did, the government could use a FISA order as an improper substitute for an ordinary criminal warrant under Title III. That concern seems to suggest that the FISA court thought Title III procedures are constitutionally mandated if the government has a prosecutorial objective regarding an agent of a foreign power. But in *United States v. United States District Court (Keith)*, 407 U.S. 297, 322 (1972)—in which the Supreme Court explicitly declined to consider foreign intelligence surveillance—the Court indicated that, even with respect to domestic national security intelligence gathering for prosecutorial purposes where a warrant was mandated, Title III procedures were not constitutionally required: “[W]e do not hold that the same type of standards and procedures prescribed by Title III are necessarily applicable to this case. We recognize that domestic security surveillance may involve different policy and practical considerations from the surveillance of ‘ordinary crime.’” Nevertheless, in asking whether FISA procedures can be regarded as reasonable under the Fourth Amendment, we think it is instructive to compare those procedures and requirements with their Title III counterparts. Obviously, the closer those FISA procedures are to Title III procedures, the lesser are our constitutional concerns.

### ***Comparison of FISA Procedures with Title III***

It is important to note that while many of FISA’s requirements for a surveillance order differ from those in Title III, few of those differences have any constitutional relevance. In the context of ordinary crime, beyond requiring searches and seizures to be reason-

able, the Supreme Court has interpreted the warrant clause of the Fourth Amendment to require three elements:

First, warrants must be issued by neutral, disinterested magistrates. Second, those seeking the warrant must demonstrate to the magistrate their probable cause to believe that “the evidence sought will aid in a particular apprehension or conviction” for a particular offense. Finally, “warrants must particularly describe the ‘things to be seized,’” as well as the place to be searched.

*Dalia v. United States*, 441 U.S. 238, 255 (1979) (citations omitted).

With limited exceptions not at issue here, both Title III and FISA require prior judicial scrutiny of an application for an order authorizing electronic surveillance. 50 U.S.C. §1805; 18 U.S.C. §2518. And there is no dispute that a FISA judge satisfies the Fourth Amendment’s requirement of a “neutral and detached magistrate.” See *United States v. Cavanagh*, 807 F.2d 787, 790 (9th Cir. 1987) (FISA court is a “detached and neutral body”); see also *Keith*, 407 U.S. at 323 (in domestic national security context, suggesting that a request for prior court authorization could, in sensitive cases, be made to any member of a specially designated court).

The statutes differ to some extent in their probable cause showings. Title III allows a court to enter an *ex parte* order authorizing electronic surveillance if it determines on the basis of the facts submitted in the government’s application that “there is probable cause for belief that an individual is committing, has committed, or is about to commit” a specified predicate offense. 18 U.S.C. §2518(3)(a). FISA by contrast requires a showing of probable cause that the target is a foreign power or an agent of a foreign power. 50 U.S.C. §1805(a)(3). We have noted, however, that where a U.S. person is involved, an “agent of a foreign power” is defined in terms of criminal activity.<sup>21</sup> Admittedly, the definition of one category of U.S.-person agents of foreign powers—that is, persons engaged in espionage and clandestine intelligence activities for a foreign power—does not necessarily require a showing of an imminent violation of criminal law. See 50 U.S.C. §1801(b)(2)(A) (defining such activities as those which “involve” or “may involve” a violation of criminal statutes of the United States). Congress clearly intended a lesser showing of probable cause for these activities than that applicable to ordinary criminal cases. See H. REP. at 39–40, 79. And with good reason—these activities present the type of threats contemplated by the Supreme Court in *Keith* when it recognized that the focus of security surveillance “may be less precise than that directed against more conventional types of crime” even in the area of *domestic* threats to national security. *Keith*, 407 U.S. at 322. Congress was aware of *Keith’s* reasoning, and recognized that it applies a *fortiori* to foreign threats. See S. REP. at 15. As the House Report notes with respect to clandestine intelligence activities:

<sup>21</sup>The term “foreign power,” which is not directly at issue in this case, is not defined solely in terms of criminal activity. For example, although the term includes a group engaged in international terrorism, which would involve criminal activity, it also includes any foreign government. 50 U.S.C. §1801(a)(1).

The terms “may involve” not only requires less information regarding the crime involved, but also permits electronic surveillance at some point prior to the time when a crime sought to be prevented, as for example, the transfer of classified documents, actually occurs.

H. REP. at 40. Congress allowed this lesser showing for clandestine intelligence activities—but not, notably, for other activities, including terrorism—because it was fully aware that such foreign intelligence crimes may be particularly difficult to detect.<sup>22</sup> At the same time, however, it provided another safeguard not present in Title III—that is, the requirement that there be probable cause to believe the target is acting “for or on behalf of a foreign power.” Under the definition of “agent of a foreign power” FISA surveillance could not be authorized

against an American reporter merely because he gathers information for publication in a newspaper, even if the information was classified by the Government. Nor would it be authorized against a Government employee or former employee who reveals secrets to a reporter or in a book for the purpose of informing the American people. This definition would not authorize surveillance of ethnic Americans who lawfully gather political information and perhaps even lawfully share it with the foreign government of their national origin. It obviously would not apply to lawful activities to lobby, influence, or inform Members of Congress or the administration to take certain positions with respect to foreign or domestic concerns. Nor would it apply to lawful gathering of information preparatory to such lawful activities.

H. REP. at 40. Similarly, FISA surveillance would not be authorized against a target engaged in purely domestic terrorism because the government would not be able to show that the target is acting for or on behalf of a foreign power. As should be clear from the foregoing, FISA applies only to certain carefully delineated, and particularly serious, foreign threats to national security.

Turning then to the first of the particularity requirements, while Title III requires probable cause to believe that particular communications concerning the specified crime will be obtained through the interception, 18 U.S.C. §2518(3)(b), FISA instead requires an official to designate the type of foreign intelligence information being sought, and to certify that the information sought is foreign intelligence information. When the target is a U.S. person, the FISA judge reviews the certification for clear error, but this “standard of review is not, of course, comparable to a probable cause finding by the judge.” H. REP. at 80. Nevertheless, FISA provides additional protections to ensure that only pertinent information is sought. The certification must be made by a national security officer—typically the FBI Director—and must be approved by the Attorney General or the Attorney General’s Deputy. Congress

<sup>22</sup> For example, a federal agent may witness a “meet” or “drop” where information is being passed but be unable to determine precisely what information is being transmitted and therefore be unable to show that a crime is involved or what specific crime is being committed. See H. Rep. at 39-40; see also S. Rep. at 23.

recognized that this certification would “assure[] written accountability within the Executive Branch” and provide “an internal check on Executive Branch arbitrariness.” H. REP. at 80. In addition, the court may require the government to submit any further information it deems necessary to determine whether or not the certification is clearly erroneous. *See* 50 U.S.C. § 1804(d).

With respect to the second element of particularity, although Title III generally requires probable cause to believe that the facilities subject to surveillance are being used or are about to be used in connection with commission of a crime or are leased to, listed in the name of, or used by the individual committing the crime, 18 U.S.C. § 2518(3)(d), FISA requires probable cause to believe that each of the facilities or places at which the surveillance is directed is being used, or is about to be used, by a foreign power or agent. 50 U.S.C. § 1805(a)(3)(B). In cases where the targeted facilities are not leased to, listed in the name of, or used by the individual committing the crime, Title III requires the government to show a nexus between the facilities and communications regarding the criminal offense. The government does not have to show, however, anything about the target of the surveillance; it is enough that “*an individual*”—not necessarily the target—is committing a crime. 18 U.S.C. §§ 2518(3)(a), (d); *see United States v. Kahn*, 415 U.S. 143, 157 (1974) (“when there is probable cause to believe that a particular telephone is being used to commit an offense but no particular person is identifiable, a wire interception order may, nevertheless, properly issue under [Title III]”). On the other hand, FISA requires probable cause to believe the target is an agent of a foreign power (that is, the individual committing a foreign intelligence crime) who uses or is about to use the targeted facility. Simply put, FISA requires less of a nexus between the facility and the pertinent communications than Title III, but more of a nexus between the target and the pertinent communications. *See* H. REP. at 73 (“the target of a surveillance is the individual or entity or about whom or from whom information is sought”).

There are other elements of Title III that at least some circuits have determined are constitutionally significant—that is, necessity, duration of surveillance, and minimization. *See, e.g., United States v. Falls*, 34 F.3d 674, 680 (8th Cir. 1994). Both statutes have a “necessity” provision, which requires the court to find that the information sought is not available through normal investigative procedures. *See* 18 U.S.C. § 2518(3)(c); 50 U.S.C. §§ 1804(a)(7)(E)(ii), 1805(a)(5). Although the court’s clearly erroneous review under FISA is more limited than under Title III, this greater deference must be viewed in light of FISA’s additional requirement that the certification of necessity come from an upper level Executive Branch official. The statutes also have duration provisions; Title III orders may last up to 30 days, 18 U.S.C. § 2518(5), while FISA orders may last up to 90 days for U.S. persons. 50 U.S.C. § 1805(e)(1). This difference is based on the nature of national security surveillance, which is “often long range and involves the interrelation of various sources and types of information.” *Keith*, 407 U.S. at 322; *see also* S. REP. at 16, 56. Moreover, the longer surveillance period is balanced by continuing FISA court oversight of minimization procedures during that period. 50 U.S.C. § 1805(e)(3); *see also* S.

REP. at 56. And where Title III requires minimization of what is acquired,<sup>23</sup> as we have discussed, for U.S. persons, FISA requires minimization of what is acquired, retained, and disseminated. The FISA court notes, however, that in practice FISA surveillance devices are normally left on continuously, and the minimization occurs in the process of indexing and logging the pertinent communications. The reasonableness of this approach depends on the facts and circumstances of each case. *Scott v. United States*, 436 U.S. 128, 140–43 (1978) (acquisition of virtually all conversations was reasonable under the circumstances). Less minimization in the acquisition stage may well be justified to the extent the intercepted communications are “ambiguous in nature or apparently involve[] guarded or coded language,” or “the investigation is focusing on what is thought to be a widespread conspiracy [where] more extensive surveillance may be justified in an attempt to determine the precise scope of the enterprise.” *Id.* at 140. Given the targets of FISA surveillance, it will often be the case that intercepted communications will be in code or a foreign language for which there is no contemporaneously available translator, and the activities of foreign agents will involve multiple actors and complex plots. [ ]<sup>24</sup>

*Amici* particularly focus on the differences between the two statutes concerning notice. Title III requires notice to the target (and, within the direction of the judge, to other persons whose communications were intercepted) once the surveillance order expires. 18 U.S.C. § 2518(8)(d). FISA does not require notice to a person whose communications were intercepted unless the government “intends to enter into evidence or otherwise use or disclose” such communications in a trial or other enumerated official proceedings. 50 U.S.C. § 1806(c). As the government points out, however, to the extent evidence obtained through a FISA surveillance order is used in a criminal proceeding, notice to the defendant is required. Of course, where such evidence is not ultimately going to be used for law enforcement, Congress observed that “[t]he need to preserve secrecy for sensitive counterintelligence sources and methods justifies elimination of the notice requirement.” S. REP. at 12.

Based on the foregoing, it should be evident that while Title III contains some protections that are not in FISA, in many significant respects the two statutes are equivalent, and in some, FISA contains additional protections.<sup>25</sup> Still, to the extent the two stat-

<sup>23</sup>Title III requires agents to conduct surveillance “in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter”. 18 U.S.C. § 2518(5).

<sup>24</sup>*Amici* also emphasize that Title III generally entitles a defendant to obtain the surveillance application and order to challenge to the legality of the surveillance, 18 U.S.C. § 2518(9), while FISA does not normally allow a defendant to obtain the same if the Attorney General states that disclosure or an adversary hearing would harm national security, 50 U.S.C. § 1806(f). Under such circumstances, the judge conducts an *in camera* and *ex parte* review to determine whether the electronic surveillance was lawful, whether disclosure or discovery is necessary, and whether to grant a motion to suppress. *Id.* §§ 1806(f), (g). Clearly, the decision whether to allow a defendant to obtain FISA materials is made by a district judge on a case by case basis, and the issue whether such a decision protects a defendant’s constitutional rights in any given case is not before us.

<sup>25</sup>In addition to the protections already discussed, FISA has more extensive reporting requirements than Title III, *compare* 18 U.S.C. § 2519(2) *with* 50 U.S.C. § 1808(a)(1), and is subject to close and continuing oversight by Congress as a check against Executive Branch abuses. S. REP. at 11–12. Also, the Patriot Act contains sunset provisions, *see* Section 224(a) of Patriot Act, Pub. L. 107–56, 115 Stat. 272 (Oct. 26, 2001), thus allowing Congress to revisit the Act’s amendments to FISA.

utes diverge in constitutionally relevant areas—in particular, in their probable cause and particularity showings—a FISA order may not be a “warrant” contemplated by the Fourth Amendment. The government itself does not actually claim that it is, instead noting only that there is authority for the proposition that a FISA order is a warrant in the constitutional sense. *See Cavanagh*, 807 F.2d at 790 (concluding that FISA order can be considered a warrant since it is issued by a detached judicial officer and is based on a reasonable showing of probable cause); *see also Pelton*, 835 F.2d at 1075 (joining *Cavanagh* in holding that FISA procedures meet constitutional requirements); *Falvey*, 540 F. Supp. at 1314 (holding that unlike in *Truong*, a congressionally crafted warrant that met Fourth Amendment standards was obtained authorizing the surveillance). We do not decide the issue but note that to the extent a FISA order comes close to meeting Title III, that certainly bears on its reasonableness under the Fourth Amendment.

***Did Truong Articulate the Appropriate Constitutional Standard?***

Ultimately, the question becomes whether FISA, as amended by the Patriot Act, is a reasonable response based on a balance of the legitimate need of the government for foreign intelligence information to protect against national security threats with the protected rights of citizens. *Cf. Keith*, 407 U.S. at 322–23 (in domestic security context, holding that standards different from those in Title III “may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of the government for intelligence information and the protected rights of our citizens”). To answer that question—whether the Patriot Act’s disavowal of the primary purpose test is constitutional—besides comparing the FISA procedures with Title III, it is necessary to consider carefully the underlying rationale of the primary purpose test.

It will be recalled that the case that set forth the primary purpose test *as constitutionally required* was *Truong*. The Fourth Circuit thought that *Keith*’s balancing standard implied the adoption of the primary purpose test. We reiterate that *Truong* dealt with a pre-FISA surveillance based on the President’s constitutional responsibility to conduct the foreign affairs of the United States. 629 F.2d at 914. Although *Truong* suggested the line it drew was a constitutional minimum that would apply to a FISA surveillance, *see id.* at 914 n.4, it had no occasion to consider the application of the statute carefully. The *Truong* court, as did all the other courts to have decided the issue, held that the President did have inherent authority to conduct warrantless searches to obtain foreign intelligence information.<sup>26</sup> It was incumbent upon the court, therefore, to determine the boundaries of that constitutional authority in the case before it. We take for granted that the President does have that authority and, assuming that is so, FISA could not encroach on the President’s constitutional power. The question before us is the reverse, does FISA amplify the President’s power by providing

<sup>26</sup> Although the plurality opinion in *Zweibon v. Mitchell*, 516 F.2d 594, 633-51 (D.C. Cir. 1975) (en banc), *cert. denied*, 425 U.S. 944 (1976), suggested the contrary in *dicta*, it did not decide the issue.

a mechanism that at least approaches a classic warrant and which therefore supports the government's contention that FISA searches are constitutionally reasonable.

The district court in the *Truong* case had excluded evidence obtained from electronic surveillance after the government's investigation—the court found—had converted from one conducted for foreign intelligence reasons to one conducted primarily as a criminal investigation. (The defendants were convicted based in part on surveillance evidence gathered before that point.) The district judge had focused on the date that the Criminal Division had taken a central role in the investigation. The court of appeals endorsed that approach stating:

We think that the district court adopted the proper test, because once surveillance becomes primarily a criminal investigation, the courts are entirely competent to make the usual probable cause determination, and because, importantly, individual privacy interests come to the fore and government foreign policy concerns recede when the government is primarily attempting to form the basis of a criminal prosecution.

*Id.* at 915 (emphasis added).

That analysis, in our view, rested on a false premise and the line the court sought to draw was inherently unstable, unrealistic, and confusing. The false premise was the assertion that once the government moves to criminal prosecution, its “foreign policy concerns” recede. As we have discussed in the first part of the opinion, that is simply not true as it relates to counterintelligence. In that field the government's primary purpose is to halt the espionage or terrorism efforts, and criminal prosecutions can be, and usually are, interrelated with other techniques used to frustrate a foreign power's efforts. Indeed, the Fourth Circuit itself, rejecting defendant's arguments that it should adopt a “solely foreign intelligence purpose test,” acknowledged that “almost all foreign intelligence investigations are in part criminal investigations.” *Id.* (It would have been more accurate to refer to counterintelligence investigations.)

The method the court endorsed for determining when an investigation became primarily criminal was based on the organizational structure of the Justice Department. The court determined an investigation became primarily criminal when the Criminal Division played a lead role. This approach has led, over time, to the quite intrusive organizational and personnel tasking the FISA court adopted. Putting aside the impropriety of an Article III court imposing such organizational strictures (which we have already discussed), the line the *Truong* court adopted—subsequently referred to as a “wall”—was unstable because it generates dangerous confusion and creates perverse organizational incentives. *See, e.g.*, AGRT Report at 723–26.<sup>27</sup> That is so because counterintelligence brings to bear both classic criminal investigation techniques as well as less focused intelligence gathering. Indeed, effective counterintelligence, we have learned, requires the wholehearted cooperation of

<sup>27</sup>We are told that the FBI has even thought it necessary because of FISA court rulings to pass off a criminal investigation to another government department when the FBI was conducting a companion counterintelligence inquiry.

all the government's personnel who can be brought to the task. A standard which punishes such cooperation could well be thought dangerous to national security.<sup>28</sup> Moreover, by focusing on the subjective motivation of those who initiate investigations, the *Truong* standard, as administered by the FISA court, could be thought to discourage desirable initiatives. (It is also at odds with the Supreme Court's Fourth Amendment jurisprudence which regards the subjective motivation of an officer conducting a search or seizure as irrelevant. *See, e.g., Whren v. United States*, 517 U.S. 806 (1996).)

Recent testimony before the Joint Intelligence Committee amply demonstrates that the *Truong* line is a very difficult one to administer. Indeed, it was suggested that the FISA court requirements based on *Truong* may well have contributed, whether correctly understood or not, to the FBI missing opportunities to anticipate the September 11, 2001 attacks.<sup>29</sup> That is not to say that we should be prepared to jettison Fourth Amendment requirements in the interest of national security. Rather, assuming *arguendo* that FISA orders are not Fourth Amendment warrants, the question becomes, are the searches constitutionally reasonable. And in judging reasonableness, the instability of the *Truong* line is a relevant consideration.

The Fourth Circuit recognized that the Supreme Court had never considered the constitutionality of warrantless government searches for foreign intelligence reasons, but concluded the analytic framework the Supreme Court adopted in *Keith*—in the case of domestic intelligence surveillance—pointed the way to the line the Fourth Circuit drew. The Court in *Keith* had, indeed, balanced the government's interest against individual privacy interests, which is undoubtedly the key to this issue as well; but we think the *Truong* court misconceived the government's interest and, moreover, did not draw a more appropriate distinction that *Keith* at least suggested. That is the line drawn in the original FISA statute itself between ordinary crimes and foreign intelligence crimes.

It will be recalled that *Keith* carefully avoided the issue of a warrantless foreign intelligence search: "We have not addressed, and express no opinion as to, the issues which may be involved with respect to activities of foreign powers or their agents." 407

<sup>28</sup>The AGRT Report bears this out: "Unfortunately, the practice of excluding the Criminal Division from FCI investigations was not an isolated event confined to the Wen Ho Lee matter. It has been a way of doing business for OIPR, acquiesced in by the FBI, and inexplicably indulged by the Department of Justice. One FBI supervisor has said that it has only been lucky that a case has not yet been hampered by the rigid interpretation of the rules governing contacts with the Criminal Division. It may be said that in the Wen Ho Lee investigation, luck ran out." *Id.* at 708 (citation omitted).

<sup>29</sup>An FBI agent recently testified that efforts to conduct a criminal investigation of two of the alleged hijackers were blocked by senior FBI officials—understandably concerned about prior FISA court criticism—who interpreted that court's decisions as precluding a criminal investigators role. One agent, frustrated at encountering the "wall," wrote to headquarters: "[S]omeday someone will die-and wall or not-the public will not understand why we were not more effective and throwing every resource we had at certain 'problems.' Let's hope the National Security Law Unit will stand behind their decisions then, especially since the biggest threat to use now, [Usama Bin Laden], is getting the most 'protection.'" The agent was told in response that headquarters was frustrated with the issue, but that those were the rules, and the National Security Law Unit does not make them up. *The Malaysia Hijacking and September 11th Joint Hearing Before the Senate and House Select Intelligence Committees* (Sept. 20, 2002) (written statement of New York special agent of the FBI).

U.S. at 321–22.<sup>30</sup> But in indicating that a somewhat more relaxed warrant could suffice in the domestic intelligence situation, the court drew a distinction between the crime involved in that case, which posed a threat to national security, and “ordinary crime.” *Id.* at 322. It pointed out that “the focus of domestic surveillance may be less precise than that directed against more conventional types of crimes.” *Id.*

The main purpose of ordinary criminal law is twofold: to punish the wrongdoer and to deter other persons in society from embarking on the same course. The government’s concern with respect to foreign intelligence crimes, on the other hand, is overwhelmingly to stop or frustrate the immediate criminal activity. As we discussed in the first section of this opinion, the criminal process is often used as part of an integrated effort to counter the malign efforts of a foreign power. Punishment of the terrorist or espionage agent is really a secondary objective;<sup>31</sup> indeed, punishment of a terrorist is often a moot point.

### ***Supreme Court’s Special Needs Cases***

The distinction between ordinary criminal prosecutions and extraordinary situations underlies the Supreme Court’s approval of entirely warrantless and even suspicionless searches that are designed to serve the government’s “special needs, beyond the normal need for law enforcement.” *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995) (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987) (internal quotation marks omitted)) (random drug-testing of student athletes).<sup>32</sup> Apprehending drunk drivers and securing the border constitute such unique interests beyond ordinary, general law enforcement. *Id.* at 654 (citing *Michigan Dep’t of State Police v. Sitz*, 496 U.S. 444 (1990), and *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976)).

A recent case, *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), is relied on by both the government and *amici*. In that case, the Court held that a highway check point designed to catch drug dealers did not fit within its special needs exception because the government’s “primary purpose” was merely “to uncover evidence of ordinary criminal wrongdoing.” *Id.* at 41–42. The Court rejected the government’s argument that the “severe and intractable nature of the drug problem” was sufficient justification for such a dragnet seizure lacking any individualized suspicion. *Id.* at 42. *Amici* particularly rely on the Court’s statement that “the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose.” *Id.*

But by “purpose” the Court makes clear it was referring not to a subjective intent, which is not relevant in ordinary Fourth Amendment probable cause analysis, but rather to a programmatic

<sup>30</sup>The Court in a footnote though, cited authority for the view that warrantless surveillance may be constitutional where foreign powers are involved. *Keith*, 407 U.S. at 322 n.20.

<sup>31</sup>To be sure, punishment of a U.S. person’s espionage for a foreign power does have a deterrent effect on others similarly situated.

<sup>32</sup>The Court has also allowed searches for certain administrative purposes to be undertaken without particularized suspicion of misconduct. *See, e.g., New York v. Burger*, 482 U.S. 691, 702–04 (1987) (warrantless administrative inspection of premises of closely regulated business); *Camara v. Municipal Court*, 387 U.S. 523, 534–39 (1967) (administrative inspection to ensure compliance with city housing code).

purpose. The Court distinguished the prior check point cases *Martinez-Fuerte* (involving checkpoints less than 100 miles from the Mexican border) and *Sitz* (checkpoints to detect intoxicated motorists) on the ground that the former involved the government's "longstanding concern for the protection of the integrity of the border," *id.* at 38 (quoting *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985)), and the latter was "aimed at reducing the immediate hazard posed by the presence of drunk drivers on the highways." *Id.* at 39. The Court emphasized that it was decidedly not drawing a distinction between suspicionless seizures with a "non-law-enforcement primary purpose" and those designed for law enforcement. *Id.* at 44 n.1. Rather, the Court distinguished general crime control programs and those that have another particular purpose, such as protection of citizens against special hazards or protection of our borders. The Court specifically acknowledged that an appropriately tailored road block could be used "to thwart an imminent terrorist attack." *Id.* at 44. The nature of the "emergency," which is simply another word for threat, takes the matter out of the realm of ordinary crime control.<sup>33</sup>

### **Conclusion**

FISA's general programmatic purpose, to protect the nation against terrorists and espionage threats directed by foreign powers, has from its outset been distinguishable from "ordinary crime control." After the events of September 11, 2001, though, it is hard to imagine greater emergencies facing Americans than those experienced on that date.

We acknowledge, however, that the constitutional question presented by this case—whether Congress's disapproval of the primary purpose test is consistent with the Fourth Amendment—has no definitive jurisprudential answer. The Supreme Court's special needs cases involve random stops (seizures) not electronic searches. In one sense, they can be thought of as a greater encroachment into personal privacy because they are not based on any particular suspicion. On the other hand, wiretapping is a good deal more intrusive than an automobile stop accompanied by questioning.

Although the Court in *City of Indianapolis* cautioned that the threat to society is not dispositive in determining whether a search or seizure is reasonable, it certainly remains a crucial factor. Our case may well involve the most serious threat our country faces. Even without taking into account the President's inherent constitutional authority to conduct warrantless foreign intelligence surveillance, we think the procedures and government showings required under FISA, if they do not meet the minimum Fourth Amendment

<sup>33</sup> *Amici* rely on *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), in arguing that the "special needs" cases acknowledge that the Fourth Amendment is particularly concerned with intrusions whose primary purpose is to gather evidence of crime. In that case, the Court struck down a non-consensual policy of testing obstetrics patients for drug use. The Court stated that "[w]hile the ultimate goal of the program may well have been to get the women in question into substance abuse treatment and off of drugs, the immediate objective of the searches was to generate evidence for law enforcement purposes in order to reach that goal." *Id.* at 82-83. (emphasis in original; footnotes omitted). In distinguishing the "special needs" cases, the Court noted that "[i]t is especially difficult to argue that the program here was designed simply to save lives," in light of evidence that the sort of program at issue actually discouraged women from seeking prenatal care. *Id.* at 844 n.23. Thus, *Ferguson* does not involve a situation in which law enforcement is directly connected to the prevention of a special harm.

warrant standards, certainly come close. We, therefore, believe firmly, applying the balancing test drawn from *Keith*, that FISA as amended is constitutional because the surveillance it authorizes are reasonable.

Accordingly, we reverse the FISA court's orders in this case to the extent they imposed conditions on the grant of the government's applications, vacate the FISA court's Rule 11, and remand with instructions to grant the applications as submitted and proceed henceforth in accordance with this opinion.

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**III. EXECUTIVE ORDERS RELATING TO THE  
NATIONAL INTELLIGENCE COMMUNITY**

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**EXECUTIVE ORDER NO. 10450, SECURITY REQUIREMENTS FOR  
GOVERNMENT EMPLOYMENT**

(April 27, 1953, 5 U.S.C. 7311 note)

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service;

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U.S.C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et seq.); [now section 1101 et seq. of title 5, United States Code]; section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j) [now sections 3333 and 7311 of title 5, United States Code]; and the act of August 26, 1950; 64 Stat. 476 (5 U.S.C. 22-1, et seq.) [now section 7501 et seq. of title 5, United States Code], and as President of the United States, and deeming such action necessary in the best interests of the national security it is hereby ordered as follows:

SECTION 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government.

SEC. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

SEC. 3. (a) The appointment of each civilian officer or employee in any department or agency and shall not be reemployed in any other department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: Provided, that upon request of the head of the department or agency concerned, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: Provided, that a person occupying a sensitive position at the time it is

designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: And provided further, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

SEC. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

SEC. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

SEC. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employees of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary the head of the department or agency concerned shall terminate the employment of such suspended officer in the interests of the national security, or employee whenever he shall determine such termination necessary or advisable in accordance with the said act of August 26, 1950.

SEC. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: Provided, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Office of Personnel Management that such person is eligible for such employment.

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications or omissions of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction or sexual perversion.

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(5) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their right under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Office of Personnel Management, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Office. The Office shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Office of Personnel Management, and other departments and agencies may use such facilities under agreement with the Office.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

SEC. 9. (a) There shall be established and maintained in the Office of Personnel Management a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Office under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Office of Personnel Management information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

SEC. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

SEC. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 31, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Office of Personnel Management on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: Provided, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Office of Personnel Management on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.

SEC. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

SEC. 14. (a) The Office of Personnel Management, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Office of Personnel Management shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

(b) All departments and agencies of the Government are directed to cooperate with the Office of Personnel Management to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Office of Personnel Management in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Office as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Office of Personnel Management is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

SEC. 15. This order shall become effective thirty days after the date hereof.

**EXECUTIVE ORDER NO. 12139, EXERCISE OF CERTAIN AUTHORITY  
RESPECTING ELECTRONIC SURVEILLANCE**

(May 23, 1979, F.R. 30311, 50 U.S.C. 1803 note)

By the authority vested in me as President by Section 102 and 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802 and 1804), in order to provide as set forth in that Act for the authorization of electronic surveillance for foreign intelligence purposes, it is hereby ordered as follows:

1-101. Pursuant to Section 102(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)), the Attorney General is authorized to approve electronic surveillance to acquire foreign intelligence information without a court order, but only if the Attorney General makes the certifications required by that Section.

1-102. Pursuant to Section 102(b) of the Foreign Intelligence Act of 1978 (50 U.S.C. 1802(b)), the Attorney General is authorized to approve applications to the court having jurisdiction under Section 103 of that Act to obtain orders for electronic surveillance for the purpose of obtaining foreign intelligence information.

1-103. Pursuant to Section 104(a)(7) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)), the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by Section 104(a)(7) of the Act in support of applications to conduct electronic surveillance:

- (a) Secretary of State.
- (b) Secretary of Defense.
- (c) Director of Central Intelligence.
- (d) Director of the Federal Bureau of Investigation.
- (e) Deputy Secretary of State.
- (f) Deputy Secretary of Defense.
- (g) Deputy Director of Central Intelligence.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President with the advice and consent of the Senate.

1-104. [Section 1-104 consisted of an amendment to section 2-202 of Executive Order No. 12036.]

1-105. [Section 1-105 consisted of an amendment to section 2-203 of Executive Order No. 12036.]

JIMMY CARTER.



**EXECUTIVE ORDER NO. 12537 OF PRESIDENT'S FOREIGN  
INTELLIGENCE ADVISORY BOARD**

(October 28, 1985, 50 F.R. 45083)

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to enhance the security of the United States by improving the quality and effectiveness of intelligence available to the United States, it is ordered as follows:

Section 1. There is hereby established within the White House Office, Executive Office of the President, the President's Foreign Intelligence Advisory Board (the "Board"). The Board shall consist of not more than fourteen members, who shall serve at the pleasure of the President and shall be appointed by the President from among trustworthy and distinguished citizens outside the government who are qualified on the basis of achievement, experience, and independence. The President shall establish the terms of the members upon their appointment. To the extent practicable, one-third of the Board at any one time shall be comprised of members whose current term of service does not exceed two years. The President shall designate a Chairman and Vice Chairman from among the members. The Board shall utilize full-time staff and consultants as authorized by the President. Such staff shall be headed by an Executive Director, appointed by the President.

Sec. 2. Board shall assess the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, of counterintelligence, and other intelligence activities. The Board shall have the authority to continually review the performance of all agencies of the Federal government that are engaged in the collection, evaluation, or production of intelligence or the execution of intelligence policy. The Board shall further be authorized to assess the adequacy of management, personnel, and organization in the intelligence agencies.

Sec. 3. The Board shall report directly to the President and advise him concerning the objectives, conduct, management, and coordination of the various activities of the agencies of the intelligence community. The Board shall report periodically, but at least semiannually, concerning findings and appraisals and shall make appropriate recommendations for actions to improve and enhance the performance of the intelligence efforts of the United States.

Sec. 4. The Board shall receive, consider, and recommend appropriate action with respect to matters, identified to the Board by the Director of Central Intelligence, the Central Intelligence Agency, or other government agencies engaged in intelligence or related activities, in which the support of the Board will further the effectiveness of the national intelligence effort. With respect to matters deemed appropriate by the President, the Board shall advise and make recommendations to the Director of Central Intelligence, the Central Intelligence Agency, and other government agencies engaged in intelligence and related activities, concerning ways to achieve increased effectiveness in meeting national intelligence needs.

Sec. 5. The Board shall have access to the full extent permitted by applicable law to all information necessary to carry out its duties in the possession of any agency of the Federal government. Information made available to the Board shall be given all necessary security protection in accordance with applicable laws and regulations. Each member of the Board, each member of the Board's staff, and each of the Board's consultants shall execute an agreement never to reveal any classified information obtained by virtue of his or her service with the Board except to the President or to such persons as the President may designate.

Sec. 6. Members of the Board shall serve without compensation, but may receive transportation, expenses, and per diem allowance as authorized by law. Staff and consultants to the Board shall receive pay and allowances as authorized by the President.

Sec. 7. Executive Order No. 12331 of October 20, 1981 is revoked.

RONALD REAGAN.

**EXECUTIVE ORDER NO. 12333 OF UNITED STATES INTELLIGENCE  
ACTIVITIES**

(December 4, 1981, 46 F.R. 59941)

Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

**Part 1**

*Goals, Direction, Duties and Responsibilities With Respect to the National Intelligence Effort*

1.1 *Goals.* The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

(b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

(c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.

(d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

1.2 *The National Security Council.*

(a) *Purpose.* The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

(b) *Committees.* The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order. The NSC, or a committee established by it, shall consider and submit to the President a policy recommendation, including all dissents, on each special activity and shall review proposals for other sensitive intelligence operations.

1.3 *National Foreign Intelligence Advisory Groups.*

(a) *Establishment and Duties.* The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

- (1) Production, review and coordination of national foreign intelligence;
- (2) Priorities for the National Foreign Intelligence Program budget;
- (3) Interagency exchanges of foreign intelligence information;
- (4) Arrangements with foreign governments on intelligence matters;
- (5) Protection of intelligence sources and methods;
- (6) Activities of common concern; and
- (7) Such other matters as may be referred by the Director of Central Intelligence.

(b) *Membership.* Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

1.4 *The Intelligence Community.* The agencies within the Intelligence Community shall, in accordance with applicable United States law and with the other provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

- (a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;
- (b) Production and dissemination of intelligence;
- (c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;
- (d) Special activities;
- (e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and
- (f) Such other intelligence activities as the President may direct from time to time.

1.5 *Director of Central Intelligence.* In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

- (a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;
- (b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;
- (c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;
- (d) Ensure implementation of special activities;
- (e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;
- (f) Participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

- (g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;
- (h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;
- (i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;
- (j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;
- (k) Have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;
- (l) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;
- (m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to the Secretary of Defense when directed by the President;
- (n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;
- (o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;
- (p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;
- (q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirements to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose;
- (r) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies; and
- (s) Facilitate the use of national foreign intelligence products by Congress in a secure manner.

*1.6 Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.*

- (a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to the requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.
- (b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director

of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

*1.7 Senior Officials of the Intelligence Community.* The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

(a) Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

(c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

(d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;

(e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

(f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;

(h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(i) Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.

*1.8 The Central Intelligence Agency.* All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon the Director of Central Intelligence and the Attorney General;

(d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

(e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the

President determines that another agency is more likely to achieve a particular objective;

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and

(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) and through (h) above, including procurement and essential cover and proprietary arrangements.

1.9 *The Department of State.* The Secretary of State shall:

(a) Overtly collect information relevant to United States Foreign policy concerns;

(b) Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

(c) Disseminate, as appropriate, reports received from United States diplomatic and consular posts;

(d) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

(e) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

1.10 *The Department of the Treasury.* The Secretary of the Treasury shall:

(a) Overtly collect foreign financial and monetary information;

(b) Participate with the Department of State in the overt collection of general foreign economic information;

(c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

(d) Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury, or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1.11 *The Department of Defense.* The Secretary of Defense shall:

(a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

(b) Collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;

(c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;

(d) Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;

(e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

(h) Protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

(i) Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies formulated by the Director of Central Intelligence;

(j) Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities; and

(k) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (j) above.

1.12 *Intelligence Components Utilized by the Secretary of Defense.* In carrying out the responsibilities assigned in section 1.11, the Secretary of Defense is authorized to utilize the following:

(a) *Defense Intelligence Agency*, whose responsibilities shall include:

(1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

(3) Coordination of all Department of Defense intelligence collection requirements;

(4) Management of the Defense Attache system; and

(5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

(b) *National Security Agency*, whose responsibilities shall include:

(1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence.

(6) Collection, processing and dissemination of signals intelligence information for counterintelligence purposes;

(7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provisions of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence.

(8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(9) Conduct of research and development to meet the needs of the United States for signals intelligence and communications security;

(10) Protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;

(11) Prescribing, within its field or authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;

(12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence; and

(13) Conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.

(c) *Offices for the collection of specialized intelligence through reconnaissance programs*, whose responsibilities shall include:

(1) Carrying out consolidated reconnaissance programs for specialized intelligence;

(2) Responding to tasking in accordance with procedures established by the Director of Central Intelligence; and

(3) Delegating authority to the various departments and agencies for research, development, procurement, and operations of designated means of collection.

(d) *The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps*, whose responsibilities shall include:

(1) Collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(2) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI; and

(3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) *Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense*. If such other offices are used for intelligence purposes, the provisions of Part 2 of this Order shall apply to those offices when used for those purposes.

1.13 *The Department of Energy*. The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1.14 *The Federal Bureau of Investigation*. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies

within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

(d) Produce and disseminate foreign intelligence and counterintelligence; and

(e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

## **Part 2**

### *Conduct of Intelligence Activities*

**2.1 Need.** Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

**2.2 Purpose.** This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

**2.3 Collection of Information.** Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

(a) Information that is publicly available or collected with the consent of the person concerned;

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities, and can be retained by it.

*2.4 Collection Techniques.* Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by agencies other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad or intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession.

(c) Physical surveillance of a United States person in the United States by agencies other than the FBI, except for:

(1) Physical surveillance of present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting; and

(2) Physical surveillance of a military person employed by a nonintelligence element of a military service.

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

*2.5 Attorney General Approval.* The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

*2.6 Assistance to Law Enforcement Authorities.* Agencies within the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employment, information, property and facilities of any agency within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and

(d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.

*2.7 Contracting.* Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with pri-

vate companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

**2.8 Consistency With Other Laws.** Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

**2.9 Undisclosed Participation in Organizations Within the United States.** No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing his intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

**2.10 Human Experimentation.** No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

**2.11 Prohibition on Assassination.** No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

**2.12 Indirect Participation.** No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

### **Part 3**

#### *General Provisions*

**3.1 Congressional Oversight.** The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413. The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), shall apply to all special activities as defined in this Order.

**3.2 Implementation.** The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

**3.3 Procedures.** Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order No. 12036. Procedures required by this Order shall be established as expeditiously as possible. All procedures promulgated pursuant to this Order shall be made available to the congressional intelligence committees.

**3.4 Definitions.** For the purposes of this Order, the following terms shall have these meanings:

(a) *Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

(b) *Electronic surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(c) *Employee* means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) *Foreign intelligence* means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) *Intelligence activities* means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(f) *Intelligence Community and agencies within the Intelligence Community* refer to the following agencies or organizations:

- (1) The Central Intelligence Agency (CIA);
- (2) The National Security Agency (NSA);
- (3) The Defense Intelligence Agency (DIA);
- (4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (5) The Bureau of Intelligence and Research of the Department of State;
- (6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and
- (7) The staff elements of the Director of Central Intelligence.

(g) *The National Foreign Intelligence Program* includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

- (1) The programs of the CIA;
- (2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;
- (3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;
- (4) Activities of the staff elements of the Director of Central Intelligence;
- (5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(h) *Special activities* mean activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(i) *United States person* means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

**3.5 Purpose and Effect.** This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

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3.6 *Revocation.* Executive Order No. 12036 of January 24, 1978, as amended, entitled "United States Intelligence Activities," is revoked.

RONALD REAGAN.

**EXECUTIVE ORDER NO. 12334 OF PRESIDENT'S INTELLIGENCE  
OVERSIGHT BOARD**

(December 4, 1981, 46 F.R. 59955)

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to enhance the security of the United States by assuring the legality of activities of the Intelligence Community, it is hereby ordered as follows:

Section 1. There is hereby established within the White House Office, Executive Office of the President, the President's Intelligence Oversight Board, which shall be composed of three members. One member, appointed from among the membership of the President's Foreign Intelligence Advisory Board, shall be designated by the President as Chairman. Members of the Board shall serve at the pleasure of the President and shall be appointed by the President from among trustworthy and distinguished citizens outside the Government who are qualified on the basis of achievement, experience and independence. The Board shall utilize such full-time staff and consultants as authorized by the President.

Sec. 2. The Board Shall:

(a) Inform the President of intelligence activities that any member of the Board believes are in violation of the Constitution or laws of the United States. Executive orders, or Presidential directives;

(b) Forward to the Attorney General reports received concerning intelligence activities that the Board believes may be unlawful;

(c) Review the internal guidelines of each agency within the Intelligence Community concerning the lawfulness of intelligence activities;

(d) Review the practices and procedures of the Inspectors General and General Counsel of the Intelligence Community for discovering and reporting intelligence activities that may be unlawful or contrary to Executive order or Presidential directive; and

(e) Conduct such investigations as the Board deems necessary to carry out its functions under this Order.

Sec. 3. The Board shall, when required by this Order, report directly to the President. The Board shall consider and take appropriate action with respect to matters identified by the Director of Central Intelligence, the Central Intelligence Agency or other agencies of the Intelligence Community. With respect to matters deemed appropriate by the President, the Board shall advise and make appropriate recommendations to the Director of Central Intelligence, the Central Intelligence Agency, and other agencies of the Intelligence Community

Sec. 4. The heads of departments and agencies of the Intelligence Community shall, to the extent permitted by law, provide the Board with all information necessary to carry out its responsibilities. Inspectors General and General Counsel of the Intelligence Community shall, to the extent permitted by law, report to the Board concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.

Sec. 5. Information made available to the Board shall be given all necessary security protection in accordance with applicable laws and regulations. Each member of the Board, each member of the Board's staff, and each of the Board's consultants shall execute an agreement never to reveal any classified information obtained by virtue of his or her service with the Board except to the President or to such persons as the President may designate.

Sec. 6. Members of the Board shall serve without compensation, but may receive transportation expense, and per diem allowance as authorized by law. Staff and consultants to the Board shall receive pay and allowances as authorized by the President.

RONALD REAGAN.

## EXECUTIVE ORDER NO. 12356 OF NATIONAL SECURITY INFORMATION

(April 2, 1982, 47 F.R. 14874)

This Order prescribes a uniform system for classifying, declassifying, and safeguarding national security information. It recognizes that it is essential that the public be informed concerning the activities of its Government, but that the interests of the United States and its citizens require that certain information concerning the national defense and foreign relations be protected against unauthorized disclosure. Information may not be classified under this Order unless its disclosure reasonably could be expected to cause damage to the national security.

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

### Part 1

#### *Original Classification*

##### Section 1.1 *Classification Levels.*

(a) National security information (hereinafter "classified information") shall be classified at one of the following three levels:

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(b) Except as otherwise provided by statute, no other terms shall be used to identify classified information.

(c) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority, who shall make this determination within thirty (30) days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make this determination within thirty (30) days.

##### Sec. 1.2 *Classification Authority.*

(a) *Top Secret.* The authority to classify information originally as Top Secret may be exercised only by:

(1) the President;

(2) agency heads and officials designated by the President in the Federal Register; and

(3) officials delegated this authority pursuant to Section 1.2(d).

(b) *Secret.* The authority to classify information originally as Secret may be exercised only by:

(1) agency heads and officials designated by the President in the Federal Register;

(2) officials with original Top Secret classification authority; and

(3) officials delegated such authority pursuant to Section 1.2(d).

(c) *Confidential.* The authority to classify information originally as Confidential may be exercised only by:

(1) agency heads and officials designated by the President in the Federal Register;

- (2) officials with original Top Secret or Secret classification authority; and
- (3) officials delegated such authority pursuant to Section 1.2(d).

(d) *Delegation of Original Classification Authority.*

(1) Delegation of original classification authority shall be limited to the minimum required to administer this Order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.

(2) Original Top Secret classification authority may be delegated only by the President; an agency head or official designated pursuant to Section 1.2(a)(2); and the senior official designated under Section 5.3(a)(1), provided that official has been delegated original Top Secret classification authority by the agency head.

(3) Original Secret classification authority may be delegated only by the President; an agency head or official designated pursuant to Sections 1.2(a)(2) and 1.2(b)(1); an official with original Top Secret classification authority; and the senior official designated under Section 5.3(a)(1), provided that official has been delegated original Secret classification authority by the agency head.

(4) Original Confidential classification authority may be delegated only by the President; an agency head or official designated pursuant to Sections 1.2(a)(2), 1.2(b)(1) and 1.2(c)(1); an official with original Top Secret classification authority; and the senior official designated under Section 5.3(a)(1), provided that official has been delegated original classification authority by the agency head.

(5) Each delegation of original classification authority shall be in writing and the authority shall not be delegated except as provided in this Order. It shall identify the official delegated the authority by name or position title. Delegated classification authority includes to classify information at the level granted and lower levels of classification.

(e) *Exceptional Cases.* When an employee, contractor, licensee, or grantee of an agency that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this Order and its implementing directives. The information shall be transmitted promptly as provided under this Order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within thirty (30) days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

Sec. 1.3 *Classification Categories.*

(a) Information shall be considered for classification if it concerns:

- (1) military plans, weapons, or operations;
- (2) the vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;
- (3) foreign government information;
- (4) intelligence activities (including special activities), or intelligence sources or methods;
- (5) foreign relations or foreign activities of the United States;
- (6) scientific, technological, or economic matters relating to the national security;
- (7) United States Government programs for safeguarding nuclear materials or facilities;
- (8) cryptology;
- (9) a confidential source; or
- (10) other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President. Any determination made under this subsection shall be reported promptly to the Director of the Information Security Oversight Office.

(b) Information that is determined to concern one or more of the categories in Section 1.3(a) shall be classified when an original classification authority also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(c) Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security.

(d) Information classified in accordance with Section 1.3 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

*Sec. 1.4 Duration of Classification.*

(a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.

(b) Automatic declassification determinations under predecessor orders shall remain valid unless the classification is extended by an authorized official of the originating agency. These extensions may be by individual documents or categories of information. The agency shall be responsible for notifying holders of the information of such extensions.

(c) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of this Order.

*Sec. 1.5 Identification and Markings.*

(a) At the time of original classification, the following information shall be shown on the face of all classified documents, or clearly associated with other forms of classified information in a manner appropriate to the medium involved, unless this information itself would reveal a confidential source or relationship not otherwise evident in the document or information:

- (1) one of the three classification levels defined in Section 1.1;
- (2) the identity of the original classification authority if other than the person whose name appears as the approving or signing official;
- (3) the agency and office of origin; and
- (4) the date or event for declassification, or the notation "Originating Agency's Determination Required."

(b) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. Agency heads may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

(c) Marking designations implementing the provisions of this Order, including abbreviations, shall conform to the standards prescribed in implementing directives issued by the Information Security Oversight Office.

(d) Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.

(e) Information assigned a level of classification under predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the officials specified in Section 3.1(b).

*Sec. 1.6 Limitations on Classification.*

(a) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) The President or an agency head or official designated under Sections 1.2(a)(2), 1.2(b)(1), or 1.2(c)(1) may reclassify information previously declassified and disclosed

if it is determined in writing that (1) the information requires protection in the interest of national security; and (2) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the Director of the Information Security Oversight Office.

(d) Information may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of this Order (Section 3.4) if such classification meets the requirements of this Order and is accomplished personally and on a document-by-document basis by the agency head, the deputy agency head, the senior agency official designated under Section 5.3(a)(1), or an official with original Top Secret classification authority.

## **Part 2**

### *Derivative Classification*

#### *Sec. 2.1 Use of Derivative Classification.*

(a) Derivative classification is (1) the determination that information is in substance the same as information currently classified, and (2) the application of the same classification markings. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

- (1) observe and respect original classification decisions; and
- (2) carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

#### *Sec. 2.2 Classification Guides.*

(a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information.

(b) Each guide shall be approved personally and in writing by an official who:

- (1) has program or supervisory responsibility over the information or is the senior agency official designated under Section 5.3(a)(1); and
- (2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agency heads may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

## **Part 3**

### *Declassification and downgrading*

#### *Sec. 3.1 Declassification Authority.*

(a) Information shall be declassified or downgraded as soon as national security considerations permit. Agencies shall coordinate their review of classified information with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by Section 1.3 despite the passage of time will continue to be protected in accordance with this Order.

(b) Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; the originator's successor; a supervisory official of either; or officials delegated such authority in writing by the agency head or the senior agency official designated pursuant to Section 5.3(a)(1).

(c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this Order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the National Security Council. The information shall remain classified, pending a prompt decision on the appeal.

(d) The provisions of this Section shall also apply to agencies that, under the terms of this Order, do not have original classification authority, but that had such authority under predecessor orders.

*Sec. 3.2 Transferred Information.*

(a) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this Order.

(b) In the case of classified information that is not officially transferred as described in Section 3.2(a), but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of this Order. Such information may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the information.

(c) Classified information accessioned into the National Archives of the United States shall be declassified or downgraded by the Archivist of the United States in accordance with this Order, the directives of the Information Security Oversight Offices, and agency guidelines.

*Sec. 3.3 Systematic Review for Declassification.*

(a) The Archivist of the United States shall, in accordance with procedures and timeframes prescribed in the Information Security Oversight Office's directives implementing this Order, systematically review for declassification or downgrading (1) classified records accessioned into the National Archives of the United States, and (2) classified presidential papers or records under the Archivist's control. Such information shall be reviewed by the Archivist for declassification or downgrading in accordance with systematic review guidelines that shall be provided by the head of the agency that originated the information, or in the case of foreign government information, by the Director of the Information Security Oversight Office in consultation with interested agency heads.

(b) Agency heads may conduct internal systematic review programs for classified information originated by their agencies contained in records determined by the Archivist to be permanently valuable but that have not been accessioned into the National Archives of the United States.

(c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

*Sec. 3.4 Mandatory Review for Declassification.*

(a) Except as provided in Section 3.4(b), all information classified under this Order or predecessor orders shall be subject to a review for declassification by the originating agency, if:

(1) the request is made by a United States citizen or permanent resident alien, a federal agency, or a State or local government; and

(2) the request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort.

(b) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President, or acting on behalf of a President is exempted from the provisions of Section 3.4(a). The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services or the Archivist pursuant to sections 2107, 2107 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective presidential papers or records. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest shall be notified promptly of the Director's decision on such appeals and may further appeal to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information no longer requiring protection under this Order. They shall release this information unless withholding is otherwise authorized under applicable law.

(d) Agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They shall also provide a means for administratively appealing a denial of a mandatory review request.

(e) The Secretary of Defense shall develop special procedures for the review of cryptologic information, and the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods, after consultation with affected agencies. The Archivist shall develop special procedures for the review of information accessioned into the National Archives of the United States.

(f) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this Order:

(1) An agency shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classified under this Order.

(2) When an agency receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases in which the originating agency determines in writing that a response under Section 3.4(f)(1) is required, the referring agency shall respond to the requester in accordance with that Section.

#### **Part 4**

##### *Safeguarding*

###### *Sec. 4.1 General Restrictions on Access.*

(a) A person is eligible for access in classified information provided that a determination of trustworthiness has been made by agency heads or designated officials and provided that such access is essential to the accomplishment of lawful and authorized Government purposes.

(b) Controls shall be established by each agency to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed only under conditions that will provide adequate protection and prevent access by unauthorized persons.

(c) Classified information shall not be disseminated outside the executive branch except under conditions that ensure that the information will be given protection equivalent to that afforded within the executive branch.

(d) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. For purposes of this Section, the Department of Defense shall be considered one agency.

###### *Sec. 4.2 Special Access Programs.*

(a) Agency heads designated pursuant to Section 1.2(a) may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or predecessor orders. Such programs may be created or continued only at the written direction of these agency heads. For special access programs pertaining to intelligence activities (including special activities but not including military operational, strategic and tactical programs), or intelligence sources or methods, this function will be exercised by the Director of Central Intelligence.

(b) Each agency head shall establish and maintain a system of accounting for special access programs. The Director of the Information Security Oversight Office, consistent with the provisions of Section 5.2(b)(4), shall have non-delegable access to all such accountings.

###### *Sec. 4.3 Access by Historical Researchers and Former Presidential Appointees.*

(a) The requirement in Section 4.1(a) that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes may be waived as provided in Section 4.3(b) for persons who:

(1) are engaged in historical research projects, or  
(2) previously have occupied policy-making positions to which they were appointed by the President.

(b) Waivers under Section 4.3(a) may be granted only if the originating agency:

(1) determines in writing that access is consistent with the interest of national security;

(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this Order; and

(3) limits the access granted to former presidential appointee to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

#### **Part 5**

##### *Implementation and Review*

###### *Sec. 5.1 Policy Direction.*

(a) The National Security Council shall provide overall policy direction for the information security program.

(b) The Administrator of General Services shall be responsible for implementing and monitoring the program established pursuant to this Order. The Administrator shall delegate the implementation and monitorship functions of this program to the Director of the Information Security Oversight Office.

###### *Sec. 5.2 Information Security Oversight Office.*

(a) The Information Security Oversight Office shall have a full-time Director appointed by the Administrator of General Services subject to approval by the President. The Director shall have the authority to appoint a staff for the Office.

(b) The Director shall.

(1) develop, in consultation with the agencies, and promulgate, subject to the approval of the National Security Council, directives for the implementation of this Order, which shall be binding on the agencies;

(2) oversee agency actions to ensure compliance with this Order and implementing directives;

(3) review all agency implementing regulations and agency guidelines for systematic declassification review. The Director shall require any regulation or guideline to be changed if it is not consistent with this Order or implementing directives. Any such decision by the Director may be appealed to the National Security Council. The agency regulation or guidelines shall remain in effect pending a prompt decision on the appeal;

(4) have the authority to conduct on-site reviews of the information security program of each agency that generates or handles classified information and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill the Director's responsibilities. If these reports, inspections, or access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior official designated under Section 5.3(a)(1) may deny access. The Director may appeal denials to the National Security Council. The denial of access shall remain in effect pending a prompt decision on the appeal;

(5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend presidential approval;

(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the information security program;

(7) have the authority to prescribe, after consultation with affected agencies, standard forms that will promote the implementation of the information security program;

- (8) report at least annually to the President through the National Security Council on the implementation of this Order; and
- (9) have the authority to convene and chair interagency meetings to discuss matters pertaining to the information security program.

*Sec. 5.3 General Responsibilities.*

Agencies that originate or handle classified information shall:

- (a) designate a senior agency official to direct and administer its information security program, which shall include an active oversight and security education program to ensure effective implementation of this Order;
- (b) promulgate implementing regulations. Any unclassified regulations that establish agency information security policy shall be published in the Federal Register to the extent that these regulations affect members of the public;
- (c) establish procedures to prevent unnecessary access to classified information, including procedures that (i) require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures, and (ii) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs; and
- (d) develop special contingency plans for the protection of classified information used in or near hostile or potentially hostile areas.

*Sec. 5.4 Sanctions.*

- (a) If the Director of the Information Security Oversight Office finds that a violation of this Order or its implementing directives may have occurred, the Director shall make a report to the head of the agency or to the senior official designated under Section 5.3(a)(1) so that corrective steps, if appropriate, may be taken.
- (b) Officers and employees of the United States Government, and its contractors, licensees, and grantees shall be subject to appropriate sanctions if they:
  - (1) knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under this Order or predecessor orders;
  - (2) knowingly and willfully classify or continue the classification of information in violation of this Order or any implementing directive; or
  - (3) knowingly and willfully violate any other provision of this Order or implementing directive.
- (c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.
- (d) Each agency head or the senior official designated under Section 5.3(a)(1) shall ensure that appropriate and prompt corrective action is taken whenever a violation under Section 5.4(b) occurs. Either shall ensure that the Director of the Information Security Oversight Office is promptly notified whenever a violation under Section 5.4(b)(1) or (2) occurs.

**Part 6**

*General Provisions*

*Sec. 6.1 Definitions.*

- (a) "Agency" has the meaning provided at 5 U.S.C. 552(e).
- (b) "Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.
- (c) "National security information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure and that is so designated.
- (d) "Foreign government information" means:
  - (1) information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or

(2) information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(e) "National security" means the national defense or foreign relations of the United States.

(f) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

(g) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

*Sec. 6.2 General.*

(a) Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this Order with respect to any question arising in the course of its administration.

(c) Nothing in this Order limits the protection afforded any information by other provisions of law.

(d) Executive Order No. 12065 of June 28, 1978, as amended, is revoked as of the effective date of this Order.

(e) This Order shall become effective on August 1, 1982.

RONALD REAGAN.



**EXECUTIVE ORDER NO. 12863, PRESIDENT'S FOREIGN INTELLIGENCE  
ADVISORY BOARD**

(September 13, 1993, 58 F.R. 48441)

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the security of the United States by improving the quality and effectiveness of intelligence available to the United States, and to assure the legality of activities of the Intelligence Community, it is ordered as follows:

**Part I. Assessment of Intelligence Activities**

Section 1.1. There is hereby established within the White House Office, Executive Office of the President, the President's Foreign Intelligence Advisory Board (PFIAB). The PFIAB shall consist of not more than 16 members, who shall serve at the pleasure of the President and shall be appointed by the President from among trustworthy and distinguished citizens outside the Government who are qualified on the basis of achievement, experience and independence. The President shall establish the terms of the members upon their appointment. To the extent practicable, one-third of the PFIAB at any one time shall be comprised of members whose term of service does not exceed 2 years. The President shall designate a Chairman and Vice Chairman from among the members. The PFIAB shall utilize full-time staff and consultants as authorized by the President. Such staff shall be headed by an Executive Director, appointed by the President.

Sec. 1.2. The PFIAB shall assess the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, and of counterintelligence and other intelligence activities. The PFIAB shall have the authority to review continually the performance of all agencies of the Federal Government that are engaged in the collection, evaluation, or production of intelligence or the execution of intelligence policy. The PFIAB shall further be authorized to assess the adequacy of management, personnel and organization in the intelligence agencies. The heads of departments and agencies of the Federal Government, to the extent permitted by law, shall provide the PFIAB with access to all information that the PFIAB deems necessary to carry out its responsibilities.

Sec. 1.3. The PFIAB shall report directly to the President and advise him concerning the objectives, conduct, management and coordination of the various activities of the agencies of the Intelligence Community. The PFIAB shall report periodically, but at least semiannually, concerning its findings and appraisals and shall make appropriate recommendations for the improvement and enhancement of the intelligence efforts of the United States.

Sec. 1.4. The PFIAB shall consider and recommend appropriate action with respect to matters, identified to the PFIAB by the Director of Central Intelligence, the Central Intelligence Agency, or other Government agencies engaged in intelligence or related activities, in which the advice of the PFIAB will further the effectiveness of the national intelligence effort. With respect to matters deemed appropriate by the President, the PFIAB shall advise and make recommendations to the Director of Central Intelligence, the Central Intelligence Agency, and other Government agencies engaged in intelligence and related activities, concerning ways to achieve increased effectiveness in meeting national intelligence needs.

**Part II. Oversight of Intelligence Activities**

Sec. 2.1. The Intelligence Oversight Board (IOB) is hereby established as a standing committee of the PFIAB. The IOB shall consist of no more than four members appointed from among the membership of the PFIAB by the Chairman of the PFIAB. The Chairman of the IOB shall be appointed by the Chairman of the PFIAB. The Chairman of the PFIAB may also serve as the Chairman of the IOB.

The IOB shall utilize such full-time staff and consultants as authorized by the Chairman of the PFIAB.

Sec. 2.2. The IOB shall:

(a) prepare for the President reports of intelligence activities that the IOB believes may be unlawful or contrary to Executive order or Presidential directive;

(b) forward to the Attorney General reports received concerning intelligence activities that the IOB believes may be unlawful or contrary to Executive order or Presidential directive;

(c) review the internal guidelines of each agency within the Intelligence Community that concern the lawfulness of intelligence activities;

(d) review the practices and procedures of the Inspectors General and General Counsel of the Intelligence Community for discovering and reporting intelligence activities that may be unlawful or contrary to Executive order or Presidential directive; and

(e) conduct such investigations as the IOB deems necessary to carry out its functions under this order.

Sec. 2.3. The IOB shall, when required by this order, report to the President through the Chairman of the PFIAB. The IOB shall consider and take appropriate action with respect to matters identified by the Director of Central Intelligence, the Central Intelligence Agency or other agencies of the Intelligence Community. With respect to matters deemed appropriate by the President, the IOB shall advise and make appropriate recommendations to the Director of Central Intelligence, the Central Intelligence Agency and other agencies of the Intelligence Community.

Sec. 2.4. The heads of departments and agencies of the Intelligence Community, to the extent permitted by law, shall provide the IOB with all information that the IOB deems necessary to carry out its responsibilities. Inspectors General and General Counsel of the Intelligence Community, to the extent permitted by law, shall report to the IOB, at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.

### **Part III. General Provisions**

Sec. 3.1. Information made available to the PFIAB, or members of the PFIAB acting in their IOB capacity, shall be given all necessary security protection in accordance with applicable laws and regulations. Each member of the PFIAB, each member of the PFIAB's staff and each of the PFIAB's consultants shall execute an agreement never to reveal any classified information obtained by virtue of his or her services with the PFIAB except to the President or to such persons as the President may designate.

Sec. 3.2. Members of the PFIAB shall serve without compensation but may receive transportation expenses and per diem allowance as authorized by law. Staff and consultants to the PFIAB shall receive pay and allowances as authorized by the President.

Sec. 3.3. Executive Order No. 12334 of December 4, 1981, as amended, and Executive Order No. 12537 of October 28, 1985, as amended, are revoked.

WILLIAM J. CLINTON

**EXECUTIVE ORDER NO. 12958 CLASSIFIED NATIONAL SECURITY INFORMATION**

(April 17, 1995, 76 F.R. 19825)

This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information. Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nation's progress depends on the free flow of information. Nevertheless, throughout our history, the national interest has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, and our participation within the community of nations. Protecting information critical to our Nation's security remains a priority. In recent years, however, dramatic changes have altered, although not eliminated, the national security threats that we confront. These changes provide a greater opportunity to emphasize our commitment to open Government.

NOW, THEREFORE, 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:

**PART 1—ORIGINAL CLASSIFICATION**

**Section 1.1. Definitions.** For purposes of this order:

(a) "National security" means the national defense or foreign relations of the United States.

(b) "Information" means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. "Control" means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

(c) "Classified national security information" (hereafter "classified information") means information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(d) "Foreign Government Information" means:

(1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) information received and treated as "Foreign Government Information" under the terms of a predecessor order.

(e) "Classification" means the act or process by which information is determined to be classified information.

(f) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

(g) "Original classification authority" means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(h) "Unauthorized disclosure" means a communication or physical transfer of classified information to an unauthorized recipient.

(i) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105, and any other entity within the executive branch that comes into the possession of classified information.

(j) "Senior agency official" means the official designated by the agency head under section 5.6(c) of this order to direct and administer the agency's program under which information is classified, safeguarded, and declassified.

(k) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(l) "Damage to the national security" means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value, and utility of that information.

**Sec. 1.2. Classification Standards.** (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:

(1) an original classification authority is classifying the information;

(2) the information is owned by, produced by or for, or is under the control of the United States Government;

(3) the information falls within one or more of the categories of information listed in section 1.5 of this order; and

(4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and the original classification authority is able to identify or describe the damage.

(b) If there is significant doubt about the need to classify information, it shall not be classified. This provision does not:

(1) amplify or modify the substantive criteria or procedures for classification; or

(2) create any substantive or procedural rights subject to judicial review.

(c) Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

**Sec. 1.3. Classification Levels.** (a) Information may be classified at one of the following three levels:

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information.

(c) If there is significant doubt about the appropriate level of classification, it shall be classified at the lower level.

**Sec. 1.4. Classification Authority.** (a) The authority to classify information originally may be exercised only by:

(1) the President;

(2) agency heads and officials designated by the President in the Federal Register; or

(3) United States Government officials delegated this authority pursuant to paragraph (c), below.

(b) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level.

(c) Delegation of original classification authority.

(1) Delegations of original classification authority shall be limited to the minimum required to administer this order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.

(2) "Top Secret" original classification authority may be delegated only by the President or by an agency head or official designated pursuant to paragraph (a)(2), above.

(3) "Secret" or "Confidential" original classification authority may be delegated only by the President; an agency head or official designated pursuant to paragraph (a)(2), above; or the senior agency official, provided that official has been delegated "Top Secret" original classification authority by the agency head.

(4) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this order. Each delegation shall identify the official by name or position title.

(d) Original classification authorities must receive training in original classification as provided in this order and its implementing directives.

(e) Exceptional cases. When an employee, contractor, licensee, certificate holder, or grantee of an agency that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this order and its implementing directives. The information shall be transmitted promptly as provided under this order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within 30 days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

**Sec. 1.5. Classification Categories.**

Information may not be considered for classification unless it concerns:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security;
- (f) United States Government programs for safeguarding nuclear materials or facilities; or
- (g) vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security.

**Sec. 1.6. Duration of Classification.** (a) At the time of original classification, the original classification authority shall attempt to establish a specific date or event for declassification based upon the duration of the national security sensitivity of the information. The date or event shall not exceed the time frame in paragraph (b), below.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, except as provided in paragraph (d), below.

(c) An original classification authority may extend the duration of classification or reclassify specific information for successive periods not to exceed 10 years at a time if such action is consistent with the standards and procedures established under this order. This provision does not apply to information contained in records that are more than 25 years old and have been determined to have permanent historical value under title 44, United States Code.

(d) At the time of original classification, the original classification authority may exempt from declassification within 10 years specific information, the unauthorized disclosure of which could reasonably be expected to cause damage to the national security for a period greater than that provided in paragraph (b), above, and the release of which could reasonably be expected to:

- (1) reveal an intelligence source, method, or activity, or a cryptologic system or activity;
- (2) reveal information that would assist in the development or use of weapons of mass destruction;
- (3) reveal information that would impair the development or use of technology within a United States weapons system;
- (4) reveal United States military plans, or national security emergency preparedness plans;
- (5) reveal foreign government information;
- (6) damage relations between the United States and a foreign government, reveal a confidential source, or seriously undermine diplomatic activities that are reasonably expected to be ongoing for a period greater than that provided in paragraph (b), above;
- (7) impair the ability of responsible United States Government officials to protect the President, the Vice President, and other individuals for whom protection services, in the interest of national security, are authorized; or
- (8) violate a statute, treaty, or international agreement.

(e) Information marked for an indefinite duration of classification under predecessor orders, for example, "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified in accordance with part 3 of this order.

**Sec. 1.7. Identification and Markings.** (a) At the time of original classification, the following shall appear on the face of each classified document, or shall be applied to other classified media in an appropriate manner:

(1) one of the three classification levels defined in section 1.3 of this order;  
(2) the identity, by name or personal identifier and position, of the original classification authority;

(3) the agency and office of origin, if not otherwise evident;

(4) declassification instructions, which shall indicate one of the following:

(A) the date or event for declassification, as prescribed in section 1.6(a) or section 1.6(c); or

(B) the date that is 10 years from the date of original classification, as prescribed in section 1.6(b); or

(C) the exemption category from declassification, as prescribed in section 1.6(d); and

(5) a concise reason for classification which, at a minimum, cites the applicable classification categories in section 1.5 of this order.

(b) Specific information contained in paragraph (a), above, may be excluded if it would reveal additional classified information.

(c) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, which portions are exempt from declassification under section 1.6(d) of this order, and which portions are unclassified. In accordance with standards prescribed in directives issued under this order, the Director of the Information Security Oversight Office may grant waivers of this requirement for specified classes of documents or information. The Director shall revoke any waiver upon a finding of abuse.

(d) Markings implementing the provisions of this order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing directives issued pursuant to this order.

(e) Foreign government information shall retain its original classification markings or shall be assigned a U.S. classification that provides a degree of protection at least equivalent to that required by the entity that furnished the information.

(f) Information assigned a level of classification under this or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Whenever such information is used in the derivative classification process or is reviewed for possible declassification, holders of such information shall coordinate with an appropriate classification authority for the application of omitted markings.

(g) The classification authority shall, whenever practicable, use a classified addendum whenever classified information constitutes a small portion of an otherwise unclassified document.

**Sec. 1.8. Classification Prohibitions and Limitations.** (a) In no case shall information be classified in order to:

(1) conceal violations of law, inefficiency, or administrative error;

(2) prevent embarrassment to a person, organization, or agency;

(3) restrain competition; or

(4) prevent or delay the release of information that does not require protection in the interest of national security.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) Information may not be reclassified after it has been declassified and released to the public under proper authority.

(d) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of section 3.6 of this order only if such classification meets the requirements of this order and is accomplished on a document-by-document basis with the personal participation or under the direction of the agency head, the deputy agency head, or the senior agency official designated under section 5.6 of this order. This provision does not apply to classified information contained in records that are more than 25 years old and have been determined to have permanent historical value under title 44, United States Code.

(e) Compilations of items of information which are individually unclassified may be classified if the compiled information reveals an additional association or relationship that:

(1) meets the standards for classification under this order; and

(2) is not otherwise revealed in the individual items of information.

As used in this order, "compilation" means an aggregation of pre-existing unclassified items of information.

**Sec. 1.9. Classification Challenges.** (a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information in accordance with agency procedures established under paragraph (b), below.

(b) In accordance with implementing directives issued pursuant to this order, an agency head or senior agency official shall establish procedures under which authorized holders of information are encouraged and expected to challenge the classification of information that they believe is improperly classified or unclassified. These procedures shall assure that:

- (1) individuals are not subject to retribution for bringing such actions;
- (2) an opportunity is provided for review by an impartial official or panel; and
- (3) individuals are advised of their right to appeal agency decisions to the Interagency Security Classification Appeals Panel established by section 5.4 of this order.

## **PART 2—DERIVATIVE CLASSIFICATION**

**Sec. 2.1. Definitions.** For purposes of this order: (a) “Derivative classification” means the incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(b) “Classification guidance” means any instruction or source that prescribes the classification of specific information.

(c) “Classification guide” means a documentary form of classification guidance issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(d) “Source document” means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(e) “Multiple sources” means two or more source documents, classification guides, or a combination of both.

**Sec. 2.2. Use of Derivative Classification.** (a) Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

- (1) observe and respect original classification decisions; and
- (2) carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple sources, the derivative classifier shall carry forward:
  - (A) the date or event for declassification that corresponds to the longest period of classification among the sources; and
  - (B) a listing of these sources on or attached to the official file or record copy.

**Sec. 2.3. Classification Guides.** (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. These guides shall conform to standards contained in directives issued under this order.

(b) Each guide shall be approved personally and in writing by an official who:

- (1) has program or supervisory responsibility over the information or is the senior agency official; and
- (2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agencies shall establish procedures to assure that classification guides are reviewed and updated as provided in directives issued under this order.

## **PART 3—DECLASSIFICATION AND DOWNGRADING**

**Sec. 3.1. DEFINITIONS.** For purposes of this order: (a) “Declassification” means the authorized change in the status of information from classified information to unclassified information.

(b) “Automatic declassification” means the declassification of information based solely upon:

- (1) the occurrence of a specific date or event as determined by the original classification authority; or
  - (2) the expiration of a maximum time frame for duration of classification established under this order.
- (c) "Declassification authority" means:
- (1) the official who authorized the original classification, if that official is still serving in the same position;
  - (2) the originator's current successor in function;
  - (3) a supervisory official of either; or
  - (4) officials delegated declassification authority in writing by the agency head or the senior agency official.
- (d) "Mandatory declassification review" means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.6 of this order.
- (e) "Systematic declassification review" means the review for declassification of classified information contained in records that have been determined by the Archivist of the United States ("Archivist") to have permanent historical value in accordance with chapter 33 of title 44, United States Code.
- (f) "Declassification guide" means written instructions issued by a declassification authority that describes the elements of information regarding a specific subject that may be declassified and the elements that must remain classified.
- (g) "Downgrading" means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.
- (h) "File series" means documentary material, regardless of its physical form or characteristics, that is arranged in accordance with a filing system or maintained as a unit because it pertains to the same function or activity.

**Sec. 3.2. Authority for Declassification.** (a) Information shall be declassified as soon as it no longer meets the standards for classification under this order.

(b) It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure. This provision does not:

- (1) amplify or modify the substantive criteria or procedures for classification; or
- (2) create any substantive or procedural rights subject to judicial review.

(c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the President through the Assistant to the President for National Security Affairs. The information shall remain classified pending a prompt decision on the appeal.

(d) The provisions of this section shall also apply to agencies that, under the terms of this order, do not have original classification authority, but had such authority under predecessor orders.

**Sec. 3.3. Transferred Information.** (a) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this order.

(b) In the case of classified information that is not officially transferred as described in paragraph (a), above, but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of this order. Such information may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the information.

(c) Classified information accessioned into the National Archives and Records Administration ("National Archives") as of the effective date of this order shall be declassified or downgraded by the Archivist in accordance with this order, the directives issued pursuant to this order, agency declassification guides, and any existing procedural agreement between the Archivist and the relevant agency head.

(d) The originating agency shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value be-

fore they are accessioned into the National Archives. However, the Archivist may require that records containing classified information be accessioned into the National Archives when necessary to comply with the provisions of the Federal Records Act. This provision does not apply to information being transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or information for which the National Archives and Records Administration serves as the custodian of the records of an agency or organization that goes out of existence.

(e) To the extent practicable, agencies shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified pursuant to the provisions for automatic declassification in sections 1.6 and 3.4 of this order.

**Sec. 3.4. Automatic Declassification.** (a) Subject to paragraph (b), below, within 5 years from the date of this order, all classified information contained in records that (1) are more than 25 years old, and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. Subsequently, all classified information in such records shall be automatically declassified no longer than 25 years from the date of its original classification, except as provided in paragraph (b), below.

(b) An agency head may exempt from automatic declassification under paragraph (a), above, specific information, the release of which should be expected to:

(1) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;

(2) reveal information that would assist in the development or use of weapons of mass destruction;

(3) reveal information that would impair U.S. cryptologic systems or activities;

(4) reveal information that would impair the application of state of the art technology within a U.S. weapon system;

(5) reveal actual U.S. military war plans that remain in effect;

(6) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

(7) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;

(8) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or

(9) violate a statute, treaty, or international agreement.

(c) No later than the effective date of this order, an agency head shall notify the President through the Assistant to the President for National Security Affairs of any specific file series of records for which a review or assessment has determined that the information within those file series almost invariably falls within one or more of the exemption categories listed in paragraph (b), above, and which the agency proposes to exempt from automatic declassification. The notification shall include:

(1) a description of the file series;

(2) an explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and

(3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b), above, a specific date or event for declassification of the information. The President may direct the agency head not to exempt the file series or to declassify the information within that series at an earlier date than recommended.

(d) At least 180 days before information is automatically declassified under this section, an agency head or senior agency official shall notify the Director of the Information Security Oversight Office, serving as Executive Secretary of the Interagency Security Classification Appeals Panel, of any specific information beyond that included in a notification to the President under paragraph (c), above, that the agency proposes to exempt from automatic declassification. The notification shall include:

(1) a description of the information;

(2) an explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and

(3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b), above, a specific date or event for declassification of the information. The Panel may direct the agency not to exempt the information or to declassify it at an earlier date than recommended. The agency head may appeal such a decision to the President through the Assistant to the President for National Security Affairs. The information will remain classified while such an appeal is pending.

(e) No later than the effective date of this order, the agency head or senior agency official shall provide the Director of the Information Security Oversight Office with a plan for compliance with the requirements of this section, including the establishment of interim target dates. Each such plan shall include the requirement that the agency declassify at least 15 percent of the records affected by this section no later than 1 year from the effective date of this order, and similar commitments for subsequent years until the effective date for automatic declassification.

(f) Information exempted from automatic declassification under this section shall remain subject to the mandatory and systematic declassification review provisions of this order.

(g) The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this section.

**Sec. 3.5. Systematic Declassification Review.** (a) Each agency that has originated classified information under this order or its predecessors shall establish and conduct a program for systematic declassification review. This program shall apply to historically valuable records exempted from automatic declassification under section 3.4 of this order. Agencies shall prioritize the systematic review of records based upon:

(1) recommendations of the Information Security Policy Advisory Council, established in section 5.5 of this order, on specific subject areas for systematic review concentration; or

(2) the degree of researcher interest and the likelihood of declassification upon review.

(b) The Archivist of the shall conduct a systematic declassification review program for classified information: (1) accessioned into the National Archives as of the effective date of this order; (2) information transferred to the Archivist pursuant to section 2203 of title 44, United States Code; and (3) information for which the National Archives and Records Administration serves as the custodian of the records of an agency or organization that has gone out of existence. This program shall apply to pertinent records no later than 25 years from the date of their creation. The Archivist shall establish priorities for the systematic review of these records based upon the recommendations of the Information Security Policy Advisory Council; or the degree of researcher interest and the likelihood of declassification upon review. These records shall be reviewed in accordance with the standards of this order, its implementing directives, and declassification guides provided to the Archivist by each agency that originated the records. The Director of the Information Security Oversight Office shall assure that agencies provide the Archivist with adequate and current declassification guides.

(c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

**Sec. 3.6. Mandatory Declassification Review.** (a) Except as provided in paragraph (b), below, all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:

(1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;

(2) the information is not exempted from search and review under the Central Intelligence Agency Information Act; and

(3) the information has not been reviewed for declassification within the past 2 years. If the agency has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the agency shall inform the requester of this fact and of the requester's appeal rights.

- (b) Information originated by:
- (1) the incumbent President;
  - (2) the incumbent President's White House Staff;
  - (3) committees, commissions, or boards appointed by the incumbent President; or

(4) other entities within the Executive Office of the President that solely advise and assist the incumbent President is exempted from the provisions of paragraph (a), above. However, the Archivist shall have the authority to review, downgrade, and declassify information of former Presidents under the control of the Archivist pursuant to sections 2107, 2111, 2111 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Interagency Security Classification Appeals Panel. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification under this order. They shall release this information unless withholding is otherwise authorized and warranted under applicable law.

(d) In accordance with directives issued pursuant to this order, agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They also shall provide a means for administratively appealing a denial of a mandatory review request, and for notifying the requester of the right to appeal a final agency decision to the Interagency Security Classification Appeals Panel.

(e) After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information, the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods, and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.

**Sec. 3.7. *Processing Requests and Reviews.*** In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this order, or pursuant to the automatic declassification or systematic review provisions of this order:

(a) An agency may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified under this order.

(b) When an agency receives any request for documents in its custody that contain information that was originally classified by another agency, or comes across such documents in the process of the automatic declassification or systematic review provisions of this order, it shall refer copies of any request and the pertinent documents to the originating agency for processing, and may, after consultation with the originating agency, inform any requester of the referral unless such association is itself classified under this order. In cases in which the originating agency determines in writing that a response under paragraph (a), above, is required, the referring agency shall respond to the requester in accordance with that paragraph.

**Sec. 3.8. *Declassification Database.*** (a) The Archivist in conjunction with the Director of the Information Security Oversight Office and those agencies that originate classified information, shall establish a Governmentwide database of information that has been declassified. The Archivist shall also explore other possible uses of technology to facilitate the declassification process.

(b) Agency heads shall fully cooperate with the Archivist in these efforts.

(c) Except as otherwise authorized and warranted by law, all declassified information contained within the database established under paragraph (a), above, shall be available to the public.

#### **PART 4—SAFEGUARDING**

**Sec. 4.1. *Definitions.*** For purposes of this order: (a) "Safeguarding" means measures and controls that are prescribed to protect classified information.

(b) "Access" means the ability or opportunity to gain knowledge of classified information.

(c) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classi-

fied information in order to perform or assist in a lawful and authorized governmental function.

(d) "Automated information system" means an assembly of computer hardware, software, or firmware configured to collect, create, communicate, compute, disseminate, process, store, or control data or information.

(e) "Integrity" means the state that exists when information is unchanged from its source and has not been accidentally or intentionally modified, altered, or destroyed.

(f) "Network" means a system of two or more computers that can exchange data or information.

(g) "Telecommunications" means the preparation, transmission, or communication of information by electronic means.

(h) "Special access program" means a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

**Sec. 4.2. General Restrictions on Access.** (a) A person may have access to classified information provided that:

(1) a favorable determination of eligibility for access has been made by an agency head or the agency head's designee;

(2) the person has signed an approved nondisclosure agreement; and

(3) the person has a need-to-know the information.

(b) Classified information shall remain under the control of the originating agency or its successor in function. An agency shall not disclose information originally classified by another agency without its authorization. An official or employee leaving agency service may not remove classified information from the agency's control.

(c) Classified information may not be removed from official premises without proper authorization.

(d) Persons authorized to disseminate classified information outside the executive branch shall assure the protection of the information in a manner equivalent to that provided within the executive branch.

(e) Consistent with law, directives, and regulation, an agency head or senior agency official shall establish uniform procedures to ensure that automated information systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information have controls that:

(1) prevent access by unauthorized persons; and

(2) ensure the integrity of the information.

(f) Consistent with law, directives, and regulation, each agency head or senior agency official shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.

(g) Consistent with directives issued pursuant to this order, an agency shall safeguard foreign government information under standards that provide a degree of protection at least equivalent to that required by the government or international organization of governments that furnished the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to United States "Confidential" information, including allowing access to individuals with a need-to-know who have not otherwise been cleared for access to classified information or executed an approved nondisclosure agreement.

(h) Except as provided by statute or directives issued pursuant to this order, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information originated within that agency. For purposes of this section, the Department of Defense shall be considered one agency.

**Sec. 4.3. Distribution Controls.** (a) Each agency shall establish controls over the distribution of classified information to assure that it is distributed only to organizations or individuals eligible for access who also have a need-to-know the information.

(b) Each agency shall update, at least annually, the automatic, routine, or recurring distribution of classified information that they distribute. Recipients shall cooperate fully with distributors who are updating distribution lists and shall notify distributors whenever a relevant change in status occurs.

**Sec. 4.4. Special Access Programs.** (a) Establishment of special access programs. Unless otherwise authorized by the President, only the Secretaries of State, Defense

and Energy, and the Director of Central Intelligence, or the principal deputy of each, may create a special access program. For special access programs pertaining to intelligence activities (including special activities, but not including military operational, strategic and tactical programs), or intelligence sources or methods, this function will be exercised by the Director of Central Intelligence. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only upon a specific finding that:

- (1) the vulnerability of, or threat to, specific information is exceptional; and
- (2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure; or
- (3) the program is required by statute.

(b) *Requirements and Limitations.*

(1) Special access programs shall be limited to programs in which the number of persons who will have access ordinarily will be reasonably small and commensurate with the objective of providing enhanced protection for the information involved.

(2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives issued pursuant to this order.

(3) Special access programs shall be subject to the oversight program established under section 5.6(c) of this order. In addition, the Director of the Information Security Oversight Office shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this order. An agency head may limit access to a special access program to the Director and no more than one other employee of the Information Security Oversight Office; or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.

(4) The agency head or principal deputy shall review annually each special access program to determine whether it continues to meet the requirements of this order.

(5) Upon request, an agency shall brief the Assistant to the President for National Security Affairs, or his or her designee, on any or all of the agency's special access programs.

(c) Within 180 days after the effective date of this order, each agency head or principal deputy shall review all existing special access programs under the agency's jurisdiction. These officials shall terminate any special access programs that do not clearly meet the provisions of this order. Each existing special access program that an agency head or principal deputy validates shall be treated as if it were established on the effective date of this order.

(d) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

**Sec. 4.5. Access by Historical Researchers and Former Presidential Appointees.**

(a) The requirement in section 4.2(a)(3) of this order that access to classified information may be granted only to individuals who have a need-to-know the information may be waived for persons who:

- (1) are engaged in historical research projects; or
- (2) previously have occupied policy-making positions to which they were appointed by the President.

(b) Waivers under this section may be granted only if the agency head or senior agency official of the originating agency:

- (1) determines in writing that access is consistent with the interest of national security;
- (2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and
- (3) limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee.

**PART 5—IMPLEMENTATION AND REVIEW**

**Sec. 5.1. Definitions.** For purposes of this order: (a) "Self-inspection" means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the program established under this order and its implementing directives.

(b) "Violation" means:

(1) any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information;

(2) any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of this order or its implementing directives; or

(3) any knowing, willful, or negligent action to create or continue a special access program contrary to the requirements of this order.

(c) "Infraction" means any knowing, willful, or negligent action contrary to the requirements of this order or its implementing directives that does not comprise a "violation," as defined above.

**Sec. 5.2. Program Direction.** (a) The Director of the Office of Management and Budget, in consultation with the Assistant to the President for National Security Affairs and the co-chairs of the Security Policy Board, shall issue such directives as are necessary to implement this order. These directives shall be binding upon the agencies. Directives issued by the Director of the Office of Management and Budget shall establish standards for:

(1) classification and marking principles;

(2) agency security education and training programs;

(3) agency self-inspection programs; and

(4) classification and declassification guides.

(b) The Director of the Office of Management and Budget shall delegate the implementation and monitorship functions of this program to the Director of the Information Security Oversight Office.

(c) The Security Policy Board, established by a Presidential Decision Directive, shall make a recommendation to the President through the Assistant to the President for National Security Affairs with respect to the issuance of a Presidential directive on safeguarding classified information. The Presidential directive shall pertain to the handling, storage, distribution, transmittal, and destruction of and accounting for classified information.

**Sec. 5.3. Information Security Oversight Office.** (a) There is established within the Office of Management and Budget an Information Security Oversight Office. The Director of the Office of Management and Budget shall appoint the Director of the Information Security Oversight Office, subject to the approval of the President.

(b) Under the direction of the Director of the Office of Management and Budget acting in consultation with the Assistant to the President for National Security Affairs, the Director of the Information Security Oversight Office shall:

(1) develop directives for the implementation of this order;

(2) oversee agency actions to ensure compliance with this order and its implementing directives;

(3) review and approve agency implementing regulations and agency guides for systematic declassification review prior to their issuance by the agency;

(4) have the authority to conduct on-site reviews of each agency's program established under this order, and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill its responsibilities. If granting access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the Director of the Office of Management and Budget within 60 days of the request for access. Access shall be denied pending a prompt decision by the Director of the Office of Management and Budget, who shall consult on this decision with the Assistant to the President for National Security Affairs;

(5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the Director of the Office of Management and Budget;

(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this order;

(7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this order;

(8) report at least annually to the President on the implementation of this order; and

(9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

**Sec. 5.4. Interagency Security Classification Appeals Panel.** (a) Establishment and Administration.

(1) There is established an Interagency Security Classification Appeals Panel ("Panel"). The Secretaries of State and Defense, the Attorney General, the Director of Central Intelligence, the Archivist of the United States, and the Assistant to the President for National Security Affairs shall each appoint a senior level representative to serve as a member of the Panel. The President shall select the Chair of the Panel from among the Panel members.

(2) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (1), above.

(3) The Director of the Information Security Oversight Office shall serve as the Executive Secretary. The staff of the Information Security Oversight Office shall provide program and administrative support for the Panel.

(4) The members and staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panel's functions.

(5) The Panel shall meet at the call of the Chair. The Chair shall schedule meetings as may be necessary for the Panel to fulfill its functions in a timely manner.

(6) The Information Security Oversight Office shall include in its reports to the President a summary of the Panel's activities.

(b) *Functions.* The Panel shall:

(1) decide on appeals by persons who have filed classification challenges under section 1.9 of this order;

(2) approve, deny, or amend agency exemptions from automatic declassification as provided in section 3.4 of this order; and

(3) decide on appeals by persons or entities who have filed requests for mandatory declassification review under section 3.6 of this order.

(c) *Rules and Procedures.* The Panel shall issue bylaws, which shall be published in the Federal Register no later than 120 days from the effective date of this order. The bylaws shall establish the rules and procedures that the Panel will follow in accepting, considering, and issuing decisions on appeals. The rules and procedures of the Panel shall provide that the Panel will consider appeals only on actions in which:

(1) the appellant has exhausted his or her administrative remedies within the responsible agency;

(2) there is no current action pending on the issue within the federal courts; and

(3) the information has not been the subject of review by the federal courts or the Panel within the past 2 years.

(d) Agency heads will cooperate fully with the Panel so that it can fulfill its functions in a timely and fully informed manner. An agency head may appeal a decision of the Panel to the President through the Assistant to the President for National Security Affairs. The Panel will report to the President through the Assistant to the President for National Security Affairs any instance in which it believes that an agency head is not cooperating fully with the Panel.

(e) The Appeals Panel is established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States. Panel decisions are committed to the discretion of the Panel, unless reversed by the President.

**Sec. 5.5. Information Security Policy Advisory Council.** (a) Establishment. There is established an Information Security Policy Advisory Council ("Council"). The Council shall be composed of seven members appointed by the President for staggered terms not to exceed 4 years, from among persons who have demonstrated interest and expertise in an area related to the subject matter of this order and are not otherwise employees of the Federal Government. The President shall appoint the Council Chair from among the members. The Council shall comply with the Federal Advisory Committee Act, as amended, 5 U.S.C.App. 2.

(b) *Functions.* The Council shall:

(1) advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, or such other executive branch officials as it deems appropriate, on policies established under this order or its implementing directives, including recommended changes to those policies;

(2) provide recommendations to agency heads for specific subject areas for systematic declassification review; and

(3) serve as a forum to discuss policy issues in dispute.

(c) *Meetings.* The Council shall meet at least twice each calendar year, and as determined by the Assistant to the President for National Security Affairs or the Director of the Office of Management and Budget.

(d) *Administration.*

(1) Each Council member may be compensated at a rate of pay not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the general schedule under section 5376 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Council.

(2) While away from their homes or regular place of business in the actual performance of the duties of the Council, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5703(b)).

(3) To the extent permitted by law and subject to the availability of funds, the Information Security Oversight Office shall provide the Council with administrative services, facilities, staff, and other support services necessary for the performance of its functions.

(4) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, that are applicable to the Council, except that of reporting to the Congress, shall be performed by the Director of the Information Security Oversight Office in accordance with the guidelines and procedures established by the General Services Administration.

**Sec. 5.6. General Responsibilities.** Heads of agencies that originate or handle classified information shall: (a) demonstrate personal commitment and commit senior management to the successful implementation of the program established under this order; (b) commit necessary resources to the effective implementation of the program established under this order; and (c) designate a senior agency official to direct and administer the program, whose responsibilities shall include:

(1) overseeing the agency's program established under this order, provided, an agency head may designate a separate official to oversee special access programs authorized under this order. This official shall provide a full accounting of the agency's special access programs at least annually;

(2) promulgating implementing regulations, which shall be published in the Federal Register to the extent that they affect members of the public;

(3) establishing and maintaining security education and training programs;

(4) establishing and maintaining an ongoing self-inspection program, which shall include the periodic review and assessment of the agency's classified product;

(5) establishing procedures to prevent unnecessary access to classified information, including procedures that: (i) require that a need for access to classified information is established before initiating administrative clearance procedures; and (ii) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs;

(6) developing special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;

(7) assuring that the performance contract or other system used to rate civilian or military personnel performance includes the management of classified information as a critical element or item to be evaluated in the rating of: (i) original classification authorities; (ii) security managers or security specialists; and (iii) all other personnel whose duties significantly involve the creation or handling of classified information; (8) accounting for the costs associated with the implementation of this order, which shall be reported to the Director of the Information Security Oversight Office for publication; and (9) assigning in a prompt manner agency personnel to respond to any request, appeal, challenge, complaint, or suggestion arising out of this order that pertains to classified information that originated in a component of the agency that no longer exists and for which there is no clear successor in function.

**Sec. 5.7. Sanctions.** (a) If the Director of the Information Security Oversight Office finds that a violation of this order or its implementing directives may have occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.

(b) Officers and employees of the United States Government, and its contractors, licensees, certificate holders, and grantees shall be subject to appropriate sanctions if they knowingly, willfully, or negligently:

(1) disclose to unauthorized persons information properly classified under this order or predecessor orders;

(2) classify or continue the classification of information in violation of this order or any implementing directive;

(3) create or continue a special access program contrary to the requirements of this order; or

(4) contravene any other provision of this order or its implementing directives.

(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.

(d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this order.

(e) The agency head or senior agency official shall:

(1) take appropriate and prompt corrective action when a violation or infraction under paragraph (b), above, occurs; and

(2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b)(1), (2) or (3), above, occurs.

#### **PART 6 GENERAL—PROVISIONS**

**Sec. 6.1. General Provisions.** (a) Nothing in this order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) Nothing in this order limits the protection afforded any information by other provisions of law, including the exemptions to the Freedom of Information Act, the Privacy Act, and the National Security Act of 1947, as amended. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. The foregoing is in addition to the specific provisions set forth in sections 1.2(b), 3.2(b) and 5.4(e) of this order.

(d) Executive Order No. 12356 of April 6, 1982, is revoked as of the effective date of this order.

**Sec. 6.2. Effective Date.** This order shall become effective 180 days from the date of this order.

WILLIAM J. CLINTON



## EXECUTIVE ORDER NO. 12968, ACCESS TO CLASSIFIED INFORMATION

(August 2, 1995, 60 F.R. 40245)

The national interest requires that certain information be maintained in confidence through a system of classification in order to protect our citizens, our democratic institutions, and our participation within the community of nations. The unauthorized disclosure of information classified in the national interest can cause irreparable damage to the national security and loss of human life.

Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon whom we rely to guard our national security.

This order establishes a uniform Federal personnel security program for employees who will be considered for initial or continued access to classified information.

NOW, THEREFORE, 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:

### **PART 1—DEFINITIONS, ACCESS TO CLASSIFIED INFORMATION, FINANCIAL DISCLOSURE, AND OTHER ITEMS**

**Section 1.1. Definitions.** For the purposes of this order: (a) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105, the "military departments," as defined in 5 U.S.C. 102, and any other entity within the executive branch that comes into the possession of classified information, including the Defense Intelligence Agency, National Security Agency, and the National Reconnaissance Office.

(b) "Applicant" means a person other than an employee who has received an authorized conditional offer of employment for a position that requires access to classified information.

(c) "Authorized investigative agency" means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(d) "Classified information" means information that has been determined pursuant to Executive Order No. 12958, or any successor order, Executive Order No. 12951, or any successor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011), to require protection against unauthorized disclosure.

(e) "Employee" means a person, other than the President and Vice President, employed by, detailed or assigned to, an agency, including members of the Armed Forces; an expert or consultant to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of an agency, including all subcontractors; a personal services contractor; or any other category of person who acts for or on behalf of an agency as determined by the appropriate agency head.

(f) "Foreign power" and "agent of a foreign power" have the meaning provided in 50 U.S.C. 1801.

(g) "Need for access" means a determination that an employee requires access to a particular level of classified information in order to perform or assist in a lawful and authorized governmental function.

(h) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(i) "Overseas Security Policy Board" means the Board established by the President to consider, develop, coordinate and promote policies, standards and agreements on overseas security operations, programs and projects that affect all United States Government agencies under the authority of a Chief of Mission.

(j) "Security Policy Board" means the Board established by the President to consider, coordinate, and recommend policy directives for U.S. security policies, procedures, and practices.

(k) "Special access program" has the meaning provided in section 4.1 of Executive Order No. 12958, or any successor order.

**Sec. 1.2. Access to Classified Information.** (a) No employee shall be granted access to classified information unless that employee has been determined to be eligible in accordance with this order and to possess a need-to-know.

(b) Agency heads shall be responsible for establishing and maintaining an effective program to ensure that access to classified information by each employee is clearly consistent with the interests of the national security.

(c) Employees shall not be granted access to classified information unless they:

(1) have been determined to be eligible for access under section 3.1 of this order by agency heads or designated officials based upon a favorable adjudication of an appropriate investigation of the employee's background;

(2) have a demonstrated need-to-know; and (3) have signed an approved nondisclosure agreement.

(d) All employees shall be subject to investigation by an appropriate government authority prior to being granted access to classified information and at any time during the period of access to ascertain whether they continue to meet the requirements for access.

(e)(1) All employees granted access to classified information shall be required as a condition of such access to provide to the employing agency written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of 3 years thereafter, to:

(A) relevant financial records that are maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401);

(B) consumer reports pertaining to the employee under the Fair Credit Reporting Act (15 U.S.C. 1681a); and (C) records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(2) Information may be requested pursuant to employee consent under this section where:

(A) there are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(B) information the employing agency deems credible indicates the employee or former employee has incurred excessive indebtedness or has acquired a level of affluence that cannot be explained by other information; or

(C) circumstances indicate the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

(3) Nothing in this section shall be construed to affect the authority of an investigating agency to obtain information pursuant to the Right to Financial Privacy Act, the Fair Credit Reporting Act or any other applicable law.

**Sec. 1.3. Financial Disclosure.** (a) Not later than 180 days after the effective date of this order, the head of each agency that originates, handles, transmits, or possesses classified information shall designate each employee, by position or category where possible, who has a regular need for access to classified information that, in the discretion of the agency head, would reveal:

(1) the identity of covert agents as defined in the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421);

(2) technical or specialized national intelligence collection and processing systems that, if disclosed in an unauthorized manner, would substantially negate or impair the effectiveness of the system;

(3) the details of:

(A) the nature, contents, algorithm, preparation, or use of any code, cipher, or cryptographic system or;

(B) the design, construction, functioning, maintenance, or repair of any cryptographic equipment; but not including information concerning the use of cryptographic equipment and services;

(4) particularly sensitive special access programs, the disclosure of which would substantially negate or impair the effectiveness of the information or activity involved; or

(5) especially sensitive nuclear weapons design information (but only for those positions that have been certified as being of a high degree of importance or sensitivity, as described in section 145(f) of the Atomic Energy Act of 1954, as amended).

(b) An employee may not be granted access, or hold a position designated as requiring access, to information described in subsection (a) unless, as a condition of access to such information, the employee:

(1) files with the head of the agency a financial disclosure report, including information with respect to the spouse and dependent children of the employee, as part of all background investigations or reinvestigations;

(2) is subject to annual financial disclosure requirements, if selected by the agency head; and

(3) files relevant information concerning foreign travel, as determined by the Security Policy Board.

(c) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop procedures for the implementation of this section, including a standard financial disclosure form for use by employees under subsection (b) of this section, and agency heads shall identify certain employees, by position or category, who are subject to annual financial disclosure.

**Sec. 1.4. *Use of Automated Financial Record Data Bases.*** As part of all investigations and reinvestigations described in section 1.2(d) of this order, agencies may request the Department of the Treasury, under terms and conditions prescribed by the Secretary of the Treasury, to search automated data bases consisting of reports of currency transactions by financial institutions, international transportation of currency or monetary instruments, foreign bank and financial accounts, transactions under \$10,000 that are reported as possible money laundering violations, and records of foreign travel.

**Sec. 1.5. *Employee Education and Assistance.*** The head of each agency that grants access to classified information shall establish a program for employees with access to classified information to: (a) educate employees about individual responsibilities under this order; and

(b) inform employees about guidance and assistance available concerning issues that may affect their eligibility for access to classified information, including sources of assistance for employees who have questions or concerns about financial matters, mental health, or substance abuse.

## **PART 2—ACCESS ELIGIBILITY POLICY AND PROCEDURE**

**Sec. 2.1. *Eligibility Determinations.*** (a) Determinations of eligibility for access to classified information shall be based on criteria established under this order. Such determinations are separate from suitability determinations with respect to the hiring or retention of persons for employment by the government or any other personnel actions.

(b) The number of employees that each agency determines are eligible for access to classified information shall be kept to the minimum required for the conduct of agency functions.

(1) Eligibility for access to classified information shall not be requested or granted solely to permit entry to, or ease of movement within, controlled areas when the employee has no need for access and access to classified information may reasonably be prevented. Where circumstances indicate employees may be inadvertently exposed to classified information in the course of their duties, agencies are authorized to grant or deny, in their discretion, facility access approvals to such employees based on an appropriate level of investigation as determined by each agency.

(2) Except in agencies where eligibility for access is a mandatory condition of employment, eligibility for access to classified information shall only be requested or granted based on a demonstrated, foreseeable need for access. Requesting or approving eligibility in excess of actual requirements is prohibited.

(3) Eligibility for access to classified information may be granted where there is a temporary need for access, such as one-time participation in a classified project, provided the investigative standards established under this order have been satisfied. In such cases, a fixed date or event for expiration shall be identified and access to classified information shall be limited to information related to the particular project or assignment.

(4) Access to classified information shall be terminated when an employee no longer has a need for access.

**Sec. 2.2. *Level of Access Approval.*** (a) The level at which an access approval is granted for an employee shall be limited, and relate directly, to the level of classified information for which there is a need for access. Eligibility for access to a higher level of classified information includes eligibility for access to information classified at a lower level.

(b) Access to classified information relating to a special access program shall be granted in accordance with procedures established by the head of the agency that created the program or, for programs pertaining to intelligence activities (including

special activities but not including military operational, strategic, and tactical programs) or intelligence sources and methods, by the Director of Central Intelligence. To the extent possible and consistent with the national security interests of the United States, such procedures shall be consistent with the standards and procedures established by and under this order.

**Sec. 2.3 *Temporary Access to Higher Levels.*** (a) An employee who has been determined to be eligible for access to classified information based on favorable adjudication of a completed investigation may be granted temporary access to a higher level where security personnel authorized by the agency head to make access eligibility determinations find that such access:

- (1) is necessary to meet operational or contractual exigencies not expected to be of a recurring nature;
- (2) will not exceed 180 days; and
- (3) is limited to specific, identifiable information that is made the subject of a written access record.

(b) Where the access granted under subsection (a) of this section involves another agency's classified information, that agency must concur before access to its information is granted.

**Sec. 2.4. *Reciprocal Acceptance of Access Eligibility Determinations.*** (a) Except when an agency has substantial information indicating that an employee may not satisfy the standards in section 3.1 of this order, background investigations and eligibility determinations conducted under this order shall be mutually and reciprocally accepted by all agencies.

(b) Except where there is substantial information indicating that the employee may not satisfy the standards in section 3.1 of this order, an employee with existing access to a special access program shall not be denied eligibility for access to another special access program at the same sensitivity level as determined personally by the agency head or deputy agency head, or have an existing access eligibility re-adjudicated, so long as the employee has a need for access to the information involved.

(c) This section shall not preclude agency heads from establishing additional, but not duplicative, investigative or adjudicative procedures for a special access program or for candidates for detail or assignment to their agencies, where such procedures are required in exceptional circumstances to protect the national security.

(d) Where temporary eligibility for access is granted under sections 2.3 or 3.3 of this order or where the determination of eligibility for access is conditional, the fact of such temporary or conditional access shall be conveyed to any other agency that considers affording the employee access to its information.

**Sec. 2.5. *Specific Access Requirement.*** (a) Employees who have been determined to be eligible for access to classified information shall be given access to classified information only where there is a need-to-know that information.

(b) It is the responsibility of employees who are authorized holders of classified information to verify that a prospective recipient's eligibility for access has been granted by an authorized agency official and to ensure that a need-to-know exists prior to allowing such access, and to challenge requests for access that do not appear well-founded.

**Sec. 2.6. *Access by Non-United States Citizens.*** (a) Where there are compelling reasons in furtherance of an agency mission, immigrant alien and foreign national employees who possess a special expertise may, in the discretion of the agency, be granted limited access to classified information only for specific programs, projects, contracts, licenses, certificates, or grants for which there is a need for access. Such individuals shall not be eligible for access to any greater level of classified information than the United States Government has determined may be releasable to the country of which the subject is currently a citizen, and such limited access may be approved only if the prior 10 years of the subject's life can be appropriately investigated. If there are any doubts concerning granting access, additional lawful investigative procedures shall be fully pursued.

(b) Exceptions to these requirements may be permitted only by the agency head or the senior agency official designated under section 6.1 of this order to further substantial national security interests.

### **PART 3—ACCESS ELIGIBILITY STANDARDS**

**Sec. 3.1. *Standards.*** (a) No employee shall be deemed to be eligible for access to classified information merely by reason of Federal service or contracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

(b) Except as provided in sections 2.6 and 3.3 of this order, eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose per-

sonal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

(c) The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information.

(d) In determining eligibility for access under this order, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No inference concerning the standards in this section may be raised solely on the basis of the sexual orientation of the employee.

(e) No negative inference concerning the standards in this section may be raised solely on the basis of mental health counseling. Such counseling can be a positive factor in eligibility determinations. However, mental health counseling, where relevant to the adjudication of access to classified information, may justify further inquiry to determine whether the standards of subsection (b) of this section are satisfied, and mental health may be considered where it directly relates to those standards.

(f) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of adjudicative guidelines for determining eligibility for access to classified information, including access to special access programs.

**Sec. 3.2. Basis for Eligibility Approval.** (a) Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this order or otherwise available to security officials and shall be made part of the applicant's or employee's security record. Applicants or employees shall be required to provide relevant information pertaining to their background and character for use in investigating and adjudicating their eligibility for access.

(b) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of investigative standards for background investigations for access to classified information. These standards may vary for the various levels of access.

(c) Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order and its implementing regulations to resolve issues that may arise during the course of a background investigation or reinvestigation.

**Sec. 3.3. Special Circumstances.** (a) In exceptional circumstances where official functions must be performed prior to the completion of the investigative and adjudication process, temporary eligibility for access to classified information may be granted to an employee while the initial investigation is underway. When such eligibility is granted, the initial investigation shall be expedited.

(1) Temporary eligibility for access under this section shall include a justification, and the employee must be notified in writing that further access is expressly conditioned on the favorable completion of the investigation and issuance of an access eligibility approval. Access will be immediately terminated, along with any assignment requiring an access eligibility approval, if such approval is not granted.

(2) Temporary eligibility for access may be granted only by security personnel authorized by the agency head to make access eligibility determinations and shall be based on minimum investigative standards developed by the Security Policy Board not later than 180 days after the effective date of this order.

(3) Temporary eligibility for access may be granted only to particular, identified categories of classified information necessary to perform the lawful and authorized functions that are the basis for the granting of temporary access.

(b) Nothing in subsection (a) shall be construed as altering the authority of an agency head to waive requirements for granting access to classified information pursuant to statutory authority.

(c) Where access has been terminated under section 2.1(b)(4) of this order and a new need for access arises, access eligibility up to the same level shall be re-approved without further investigation as to employees who were determined to be eligible based on a favorable adjudication of an investigation completed within the

prior 5 years, provided they have remained employed by the same employer during the period in question, the employee certifies in writing that there has been no change in the relevant information provided by the employee for the last background investigation, and there is no information that would tend to indicate the employee may no longer satisfy the standards established by this order for access to classified information.

(d) Access eligibility shall be reapproved for individuals who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years and who have been retired or otherwise separated from United States Government employment for not more than 2 years; provided there is no indication the individual may no longer satisfy the standards of this order, the individual certifies in writing that there has been no change in the relevant information provided by the individual for the last background investigation, and an appropriate record check reveals no unfavorable information.

**Sec. 3.4. *Reinvestigation Requirements.*** (a) Because circumstances and characteristics may change dramatically over time and thereby alter the eligibility of employees for continued access to classified information, reinvestigations shall be conducted with the same priority and care as initial investigations.

(b) Employees who are eligible for access to classified information shall be the subject of periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access established in this order.

(c) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of reinvestigative standards, including the frequency of reinvestigations.

#### **PART 4—INVESTIGATIONS FOR FOREIGN GOVERNMENTS**

**Sec. 4. *Authority.*** Agencies that conduct background investigations, including the Federal Bureau of Investigation and the Department of State, are authorized to conduct personnel security investigations in the United States when requested by a foreign government as part of its own personnel security program and with the consent of the individual.

#### **PART 5—REVIEW OF ACCESS DETERMINATIONS**

**Sec. 5.1. *Determinations of Need for Access.*** A determination under section 2.1(b)(4) of this order that an employee does not have, or no longer has, a need for access is a discretionary determination and shall be conclusive.

**Sec. 5.2. *Review Proceedings for Denials or Revocations of Eligibility for Access.***

(a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of this order shall be:

(1) provided as comprehensive and detailed a written explanation of the basis for that conclusion as the national security interests of the United States and other applicable law permit;

(2) provided within 30 days, upon request and to the extent the documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (3 U.S.C. 552a), as applicable, any documents, records, and reports upon which a denial or revocation is based;

(3) informed of their right to be represented by counsel or other representative at their own expense; to request any documents, records, and reports as described in section 5.2(a)(2) upon which a denial or revocation is based; and to request the entire investigative file, as permitted by the national security and other applicable law, which, if requested, shall be promptly provided prior to the time set for a written reply;

(4) provided a reasonable opportunity to reply in writing to, and to request a review of, the determination;

(5) provided written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal;

(6) provided an opportunity to appeal in writing to a high level panel, appointed by the agency head, which shall be comprised of at least three members, two of whom shall be selected from outside the security field. Decisions of the panel shall be in writing, and final except as provided in subsection (b) of this section; and

(7) provided an opportunity to appear personally and to present relevant documents, materials, and information at some point in the process before an adjudicative or other authority, other than the investigating entity, as determined by the agency head. A written summary or recording of such appearance shall be made part of the applicant's or employee's security record, unless such

appearance occurs in the presence of the appeals panel described in subsection (a)(6) of this section.

(b) Nothing in this section shall prohibit an agency head from personally exercising the appeal authority in subsection (a)(6) of this section based upon recommendations from an appeals panel. In such case, the decision of the agency head shall be final.

(c) Agency heads shall promulgate regulations to implement this section and, at their sole discretion and as resources and national security considerations permit, may provide additional review proceedings beyond those required by subsection (a) of this section. This section does not require additional proceedings, however, and creates no procedural or substantive rights.

(d) When the head of an agency or principal deputy personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security interests of the United States by revealing classified information, the particular procedure shall not be made available. This certification shall be conclusive.

(e) This section shall not be deemed to limit or affect the responsibility and power of an agency head pursuant to any law or other Executive order to deny or terminate access to classified information in the interests of national security. The power and responsibility to deny or terminate access to classified information pursuant to any law or other Executive order may be exercised only where the agency head determines that the procedures prescribed in subsection (a) of this section cannot be invoked in a manner that is consistent with national security. This determination shall be conclusive.

(f)(1) This section shall not be deemed to limit or affect the responsibility and power of an agency head to make determinations of suitability for employment.

(2) Nothing in this section shall require that an agency provide the procedures prescribed in subsection (a) of this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any other reason other than denial of eligibility for access to classified information.

(3) A suitability determination shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

#### **PART 6—IMPLEMENTATION**

**Sec. 6.1. *Agency Implementing Responsibilities.*** Heads of agencies that grant employees access to classified information shall: (a) designate a senior agency official to direct and administer the agency's personnel security program established by this order. All such programs shall include active oversight and continuing security education and awareness programs to ensure effective implementation of this order;

(b) cooperate, under the guidance of the Security Policy Board, with other agencies to achieve practical, consistent, and effective adjudicative training and guidelines; and

(c) conduct periodic evaluations of the agency's implementation and administration of this order, including the implementation of section 1.3(a) of this order. Copies of each report shall be provided to the Security Policy Board.

**Sec. 6.2. *Employee Responsibilities.*** (a) Employees who are granted eligibility for access to classified information shall:

(1) protect classified information in their custody from unauthorized disclosure;

(2) report all contacts with persons, including foreign nationals, who seek in any way to obtain unauthorized access to classified information;

(3) report all violations of security regulations to the appropriate security officials; and

(4) comply with all other security requirements set forth in this order and its implementing regulations.

(b) Employees are encouraged and expected to report any information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with the national security.

**Sec. 6.3. *Security Policy Board Responsibilities and Implementation.*** (a) With respect to actions taken by the Security Policy Board pursuant to sections 1.3(c), 3.1(f), 3.2(b), 3.3(a)(2), and 3.4(c) of this order, the Security Policy Board shall make recommendations to the President through the Assistant to the President for National Security Affairs for implementation.

(b) Any guidelines, standards, or procedures developed by the Security Policy Board pursuant to this order shall be consistent with those guidelines issued by the Federal Bureau of Investigation in March 1994 on Background Investigations Policy/Guidelines Regarding Sexual Orientation.

(c) In carrying out its responsibilities under this order, the Security Policy Board shall consult where appropriate with the Overseas Security Policy Board. In carrying out its responsibilities under section 1.3(c) of this order, the Security Policy Board shall obtain the concurrence of the Director of the Office of Management and Budget.

**Sec. 6.4. Sanctions.** Employees shall be subject to appropriate sanctions if they knowingly and willfully grant eligibility for, or allow access to, classified information in violation of this order or its implementing regulations. Sanctions may include reprimand, suspension without pay, removal, and other actions in accordance with applicable law and agency regulations.

#### **PART 7—GENERAL PROVISIONS**

**Sec. 7.1. Classified Information Procedures Act.** Nothing in this order is intended to alter the procedures established under the Classified Information Procedures Act (18 U.S.C. App. 1).

**Sec. 7.2. General.** (a) Information obtained by an agency under sections 1.2(e) or 1.3 of this order may not be disseminated outside the agency, except to:

(1) the agency employing the employee who is the subject of the records or information;

(2) the Department of Justice for law enforcement or counterintelligence purposes; or

(3) any agency if such information is clearly relevant to the authorized responsibilities of such agency.

(b) The Attorney General, at the request of the head of an agency, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control, except that this order shall not diminish or otherwise affect the requirements of Executive Order No. 10450, the denial and revocation procedures provided to individuals covered by Executive Order No. 10865, as amended, or access by historical researchers and former presidential appointees under Executive Order No. 12958 or any successor order.

(d) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

(e) This Executive order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(f) This order is effective immediately.

WILLIAM J. CLINTON

**EXECUTIVE ORDER NO. 13284, AMENDMENT OF EXECUTIVE ORDERS,  
AND OTHER ACTIONS, IN CONNECTION WITH THE ESTABLISHMENT  
OF THE DEPARTMENT OF HOMELAND SECURITY**

(JANUARY 23, 2003)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (Public Law 107-296), and the National Security Act of 1947, as amended (50 U.S.C. 401 et seq.), and in order to reflect responsibilities vested in the Secretary of Homeland Security and take other actions in connection with the establishment of the Department of Homeland Security, it is hereby ordered as follows:

**Section 1.** Executive Order 13234 of November 9, 2001 ("Presidential Task Force on Citizen Preparedness in the War on Terrorism"), is amended by inserting "the Department of Homeland Security," after "the Office of Management and Budget," in section 2(a).

**Sec. 2.** Executive Order 13231 of October 16, 2001 ("Critical Infrastructure Protection in the Information Age"), is amended by:

(a) inserting "(i) Secretary of Homeland Security;" after "or their designees:" in section 6(a); and

(b) renumbering the subsequent subsections in section 6(a) appropriately.

**Sec. 3.** Executive Order 13228 of October 8, 2001 ("Establishing the Office of Homeland Security and the Homeland Security Council"), is amended by inserting "the Secretary of Homeland Security," after "the Secretary of Transportation," in section 5(b). Further, during the period from January 24, 2003, until March 1, 2003, the Secretary of Homeland Security shall have the responsibility for coordinating the domestic response efforts otherwise assigned to the Assistant to the President for Homeland Security pursuant to section 3(g) of Executive Order 13228.

**Sec. 4.** Executive Order 13224 of September 23, 2001 ("Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), as amended, is further amended by:

(a) inserting ", the Secretary of Homeland Security," after "the Secretary of the Treasury" in sections 1(b) and 1(d) (the first time it appears); and

(b) inserting ", the Secretary of Homeland Security," after "the Secretary of State" in sections 1(c) and 1(d) (the second time it appears), 5 (wherever it appears), and 7.

**Sec. 5.** Executive Order 13151 of April 27, 2000 ("Global Disaster Information Network"), is amended by: (a) inserting "(8) Department of Homeland Security;" after "(7) Department of Energy;" in section 2(a); and (b) renumbering the subsequent subsections in section 2(a) appropriately.

**Sec. 6.** Executive Order 13122 of May 25, 1999 ("Interagency Task Force on the Economic Development of the Southwest Border"), is amended by inserting "Secretary of Homeland Security," after "Secretary of the Treasury," in section 1(b).

**Sec. 7.** Executive Order 13048 of June 10, 1997 ("Improving Administrative Management in the Executive Branch"), is amended by:

(a) inserting "15. Department of Homeland Security;" after "14. Department of Veterans Affairs;" in section 1(a); and

(b) renumbering all subsequent subsections in section 1(a) appropriately.

**Sec. 8.** Executive Order 12992 of March 15, 1996 ("President's Council on Counter-Narcotics"), as amended, is further amended by:

(a) inserting "(n) Secretary of Homeland Security;" after "(m) Secretary of Veterans Affairs;" in section 2; and

(b) relettering all subsequent subsections in section 2 appropriately.

**Sec. 9.** Executive Order 12881 of November 23, 1993 ("Establishment of the National Science and Technology Council"), is amended by:

(a) inserting "(i) Secretary of Homeland Security;" after "(h) Secretary of the Interior;" in section 2; and

(b) relettering all subsequent subsections in section 2 appropriately.

**Sec. 10.** Executive Order 12859 of August 16, 1993 ("Establishment of the Domestic Policy Council"), is amended by:

- (a) inserting “(o) Secretary of Homeland Security;” after “(n) Secretary of the Treasury;” in section 2; and
- (b) relettering all subsequent subsections in section 2 appropriately.
- Sec. 11.** Executive Order 12590 of March 26, 1987 (“National Drug Policy Board”), is amended by:
- (a) inserting “(13) the Secretary of Homeland Security;” after “(12) the Secretary of Education;” in section 1(b); and
- (b) renumbering all subsequent subsections in section 1(b) appropriately.
- Sec. 12.** Executive Order 12260 of December 31, 1980 (“Agreement on Government Procurement”), as amended, is further amended by:
- (a) inserting “14. Department of Homeland Security” after “13. Department of Health and Human Services” in the Annex; and
- (b) renumbering all subsequent subsections in the Annex appropriately.
- Sec. 13.** Executive Order 11958 of January 18, 1977 (“Administration of Arms Export Controls”), as amended, is further amended by:
- (a) striking “Secretary of the Treasury” wherever it appears in section 1(l)(2) and inserting “Attorney General” in lieu thereof; and
- (b) inserting “the Attorney General,” after “the Secretary of the Treasury,” in section 2(a).
- Sec. 14.** Executive Order 11423 of August 16, 1968 (“Providing for the Performance of Certain Functions Heretofore Performed by the President with Respect to Certain Facilities Constructed and Maintained on the Borders of the United States”), as amended, is further amended by inserting “the Secretary of Homeland Security,” after “the Secretary of Transportation,” in section 1(b).
- Sec. 15.** Executive Order 10865 of February 20, 1960 (“Safeguarding Classified Information Within Industry”), as amended, is further amended by inserting “the Secretary of Homeland Security,” after “the Secretary of Energy,” in section 1.
- Sec. 16.** Executive Order 13011 of July 16, 1996 (“Federal Information Technology”), is amended by:
- (a) inserting “15. Department of Homeland Security;” after “14. Department of Veterans Affairs;” in section 3(b); and
- (b) renumbering all subsequent subsections in section 3(b) appropriately.
- Sec. 17.** Those elements of the Department of Homeland Security that are supervised by the Department’s Under Secretary for Information Analysis and Infrastructure Protection through the Department’s Assistant Secretary for Information Analysis, with the exception of those functions that involve no analysis of foreign intelligence information, are designated as elements of the Intelligence Community under section 201(h) of the Homeland Security Act of 2002 and section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a).
- Sec. 18.** Executive Order 12333 of December 4, 1981 (“United States Intelligence Activities”), is amended in Part 3.4(f) by:
- (a) striking “and” at the end of subpart 3.4(f)(6);
- (b) striking the period and inserting “; and” at the end of subpart 3.4(f)(7); and
- (c) adding a new subpart 3.4(f)(8) to read as follows: “(8) Those elements of the Department of Homeland Security that are supervised by the Department’s Under Secretary for Information Analysis and Infrastructure Protection through the Department’s Assistant Secretary for Information Analysis, with the exception of those functions that involve no analysis of foreign intelligence information.”
- Sec. 19.** Functions of Certain Officials in the Department of Homeland Security. The Secretary of Homeland Security, the Deputy Secretary of Homeland Security, the Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, and the Assistant Secretary for Information Analysis, Department of Homeland Security, each shall be considered a “Senior Official of the Intelligence Community” for purposes of Executive Order 12333, and all other relevant authorities, and shall:
- (a) recognize and give effect to all current clearances for access to classified information held by those who become employees of the Department of Homeland Security by operation of law pursuant to the Homeland Security Act of 2002 or by Presidential appointment;
- (b) recognize and give effect to all current clearances for access to classified information held by those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities;
- (c) make all clearance and access determinations pursuant to Executive Order 12968 of August 2, 1995, or any successor Executive Order, as to employees of, and applicants for employment in, the Department of Homeland Security

who do not then hold a current clearance for access to classified information; and

(d) ensure all clearance and access determinations for those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities are made in accordance with Executive Order 12829 of January 6, 1993.

**Sec. 20.** Pursuant to the provisions of section 1.4 of Executive Order 12958 of April 17, 1995 ("Classified National Security Information"), I hereby authorize the Secretary of Homeland Security to classify information originally as "Top Secret." Any delegation of this authority shall be in accordance with section 1.4 of that order or any successor Executive Orders.

**Sec. 21.** This order shall become effective on January 24, 2003.

**Sec. 22.** This order does not create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH



**EXECUTIVE ORDER NO. 13292, FURTHER AMENDMENT TO EXECUTIVE ORDER 12958, AS AMENDED, CLASSIFIED NATIONAL SECURITY INFORMATION**

(MARCH 25, 2003)

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further amend Executive Order 12958, as amended, it is hereby ordered that Executive Order 12958 is amended to read as follows:

**“Classified National Security Information**

This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism. Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nation's progress depends on the free flow of information. Nevertheless, throughout our history, the national defense has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, our homeland security, and our interactions with foreign nations. Protecting information critical to our Nation's security remains a priority.

NOW, THEREFORE, 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:

**PART 1—ORIGINAL CLASSIFICATION**

**Sec. 1.1. *Classification Standards.*** (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and

- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

(b) Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

(c) The unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

**Sec. 1.2. *Classification Levels.*** (a) Information may be classified at one of the following three levels:

- (1) “Top Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

- (2) “Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

- (3) “Confidential” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information.

**Sec. 1.3. *Classification Authority.*** (a) The authority to classify information originally may be exercised only by:

- (1) the President and, in the performance of executive duties, the Vice President;

- (2) agency heads and officials designated by the President in the Federal Register; and
- (3) United States Government officials delegated this authority pursuant to paragraph (c) of this section.
- (b) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level.
- (c) Delegation of original classification authority.
- (1) Delegations of original classification authority shall be limited to the minimum required to administer this order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.
- (2) "Top Secret" original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to paragraph (a)(2) of this section.
- (3) "Secret" or "Confidential" original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to paragraph (a)(2) of this section; or the senior agency official described in section 5.4(d) of this order, provided that official has been delegated "Top Secret" original classification authority by the agency head.
- (4) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this order. Each delegation shall identify the official by name or position title.
- (d) Original classification authorities must receive training in original classification as provided in this order and its implementing directives. Such training must include instruction on the proper safeguarding of classified information and of the criminal, civil, and administrative sanctions that may be brought against an individual who fails to protect classified information from unauthorized disclosure.
- (e) Exceptional cases. When an employee, government contractor, licensee, certificate holder, or grantee of an agency who does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this order and its implementing directives. The information shall be transmitted promptly as provided under this order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within 30 days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

**Sec. 1.4. Classification Categories.** Information shall not be considered for classification unless it concerns:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;
- (f) United States Government programs for safeguarding nuclear materials or facilities;
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or
- (h) weapons of mass destruction.

**Sec. 1.5. Duration of Classification.** (a) At the time of original classification, the original classification authority shall attempt to establish a specific date or event for declassification based upon the duration of the national security sensitivity of the information. Upon reaching the date or event, the information shall be automatically declassified. The date or event shall not exceed the time frame established in paragraph (b) of this section.

- (b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires that it shall be marked for declassification for up to 25 years from the date of the original decision. All information classified under this section shall be subject to section 3.3

of this order if it is contained in records of permanent historical value under title 44, United States Code.

(c) An original classification authority may extend the duration of classification, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under this order are followed.

(d) Information marked for an indefinite duration of classification under predecessor orders, for example, marked as "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified in accordance with part 3 of this order.

**Sec. 1.6. Identification and Markings.** (a) At the time of original classification, the following shall appear on the face of each classified document, or shall be applied to other classified media in an appropriate manner:

(1) one of the three classification levels defined in section 1.2 of this order;

(2) the identity, by name or personal identifier and position, of the original classification authority;

(3) the agency and office of origin, if not otherwise evident;

(4) declassification instructions, which shall indicate one of the following:

(A) the date or event for declassification, as prescribed in section 1.5(a) or section 1.5(c);

(B) the date that is 10 years from the date of original classification, as prescribed in section 1.5(b); or

(C) the date that is up to 25 years from the date of original classification, as prescribed in section 1.5 (b); and

(5) a concise reason for classification that, at a minimum, cites the applicable classification categories in section 1.4

(b) Specific information described in paragraph (a) of this section may be excluded if it would reveal additional classified information.

(c) With respect to each classified document, the agency originating the document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are unclassified. In accordance with standards prescribed in directives issued under this order, the Director of the Information Security Oversight Office may grant waivers of this requirement. The Director shall revoke any waiver upon a finding of abuse.

(d) Markings implementing the provisions of this order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing directives issued pursuant to this order.

(e) Foreign government information shall retain its original classification markings or shall be assigned a U.S. classification that provides a degree of protection at least equivalent to that required by the entity that furnished the information. Foreign government information retaining its original classification markings need not be assigned a U.S. classification marking provided that the responsible agency determines that the foreign government markings are adequate to meet the purposes served by U.S. classification markings.

(f) Information assigned a level of classification under this or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Whenever such information is used in the derivative classification process or is reviewed for possible declassification, holders of such information shall coordinate with an appropriate classification authority for the application of omitted markings.

(g) The classification authority shall, whenever practicable, use a classified addendum whenever classified information constitutes a small portion of an otherwise unclassified document.

(h) Prior to public release, all declassified records shall be appropriately marked to reflect their declassification.

**Sec. 1.7. Classification Prohibitions and Limitations.**

(a) In no case shall information be classified in order to:

(1) conceal violations of law, inefficiency, or administrative error;

(2) prevent embarrassment to a person, organization, or agency;

(3) restrain competition; or

(4) prevent or delay the release of information that does not require protection in the interest of the national security.

(b) Basic scientific research information not clearly related to the national security shall not be classified.

(c) Information may be reclassified after declassification and release to the public under proper authority only in accordance with the following conditions:

(1) the reclassification action is taken under the personal authority of the agency head or deputy agency head, who determines in writing that the reclassification of the information is necessary in the interest of the national security;

(2) the information may be reasonably recovered; and

(3) the reclassification action is reported promptly to the Director of the Information Security Oversight Office.

(d) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of section 3.5 of this order only if such classification meets the requirements of this order and is accomplished on a document-by-document basis with the personal participation or under the direction of the agency head, the deputy agency head, or the senior agency official designated under section 5.4 of this order.

(e) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that: (1) meets the standards for classification under this order; and (2) is not otherwise revealed in the individual items of information. As used in this order, "compilation" means an aggregation of pre-existing unclassified items of information.

**Sec. 1.8. Classification Challenges.** (a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information in accordance with agency procedures established under paragraph (b) of this section.

(b) In accordance with implementing directives issued pursuant to this order, an agency head or senior agency official shall establish procedures under which authorized holders of information are encouraged and expected to challenge the classification of information that they believe is improperly classified or unclassified. These procedures shall ensure that:

(1) individuals are not subject to retribution for bringing such actions;

(2) an opportunity is provided for review by an impartial official or panel; and

(3) individuals are advised of their right to appeal agency decisions to the Interagency Security Classification Appeals Panel (Panel) established by section 5.3 of this order.

#### PART 2—DERIVATIVE CLASSIFICATION

**Sec. 2.1. Use of Derivative Classification.** (a) Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

(1) observe and respect original classification decisions; and

(2) carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple sources, the derivative classifier shall carry forward:

(A) the date or event for declassification that corresponds to the longest period of classification among the sources; and

(B) a listing of these sources on or attached to the official file or record copy.

**Sec. 2.2. Classification Guides.** (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. These guides shall conform to standards contained in directives issued under this order.

(b) Each guide shall be approved personally and in writing by an official who:

(1) has program or supervisory responsibility over the information or is the senior agency official; and

(2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agencies shall establish procedures to ensure that classification guides are reviewed and updated as provided in directives issued under this order.

#### PART 3—DECLASSIFICATION AND DOWNGRADING

**Sec. 3.1. Authority for Declassification.** (a) Information shall be declassified as soon as it no longer meets the standards for classification under this order.

(b) It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to the

national security that might reasonably be expected from disclosure. This provision does not:

- (1) amplify or modify the substantive criteria or procedures for classification; or
- (2) create any substantive or procedural rights subject to judicial review.

(c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the President through the Assistant to the President for National Security Affairs. The information shall remain classified pending a prompt decision on the appeal.

(d) The provisions of this section shall also apply to agencies that, under the terms of this order, do not have original classification authority, but had such authority under predecessor orders.

**Sec. 3.2. *Transferred Records.*** (a) In the case of classified records transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this order.

(b) In the case of classified records that are not officially transferred as described in paragraph (a) of this section, but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such records shall be deemed to be the originating agency for purposes of this order. Such records may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the records.

(c) Classified records accessioned into the National Archives and Records Administration (National Archives) as of the effective date of this order shall be declassified or downgraded by the Archivist of the United States (Archivist) in accordance with this order, the directives issued pursuant to this order, agency declassification guides, and any existing procedural agreement between the Archivist and the relevant agency head.

(d) The originating agency shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value before they are accessioned into the National Archives. However, the Archivist may require that classified records be accessioned into the National Archives when necessary to comply with the provisions of the Federal Records Act. This provision does not apply to records being transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or records for which the National Archives serves as the custodian of the records of an agency or organization that has gone out of existence.

(e) To the extent practicable, agencies shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified pursuant to the provisions for automatic declassification in section 3.3 of this order.

**Sec. 3.3. *Automatic Declassification.*** (a) Subject to paragraphs (b)-(e) of this section, on December 31, 2006, all classified records that (1) are more than 25 years old and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. Subsequently, all classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of its original classification, except as provided in paragraphs (b)-(e) of this section.

(b) An agency head may exempt from automatic declassification under paragraph (a) of this section specific information, the release of which could be expected to:

- (1) reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method;
- (2) reveal information that would assist in the development or use of weapons of mass destruction;
- (3) reveal information that would impair U.S. cryptologic systems or activities;
- (4) reveal information that would impair the application of state of the art technology within a U.S. weapon system;
- (5) reveal actual U.S. military war plans that remain in effect;
- (6) reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

(7) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;

(8) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, infrastructures, or projects relating to the national security; or

(9) violate a statute, treaty, or international agreement.

(c) An agency head shall notify the President through the Assistant to the President for National Security Affairs of any specific file series of records for which a review or assessment has determined that the information within that file series almost invariably falls within one or more of the exemption categories listed in paragraph (b) of this section and which the agency proposes to exempt from automatic declassification. The notification shall include:

(1) a description of the file series;

(2) an explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and

(3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b) of this section, a specific date or event for declassification of the information. The President may direct the agency head not to exempt the file series or to declassify the information within that series at an earlier date than recommended. File series exemptions previously approved by the President shall remain valid without any additional agency action.

(d) At least 180 days before information is automatically declassified under this section, an agency head or senior agency official shall notify the Director of the Information Security Oversight Office, serving as Executive Secretary of the Panel, of any specific information beyond that included in a notification to the President under paragraph (c) of this section that the agency proposes to exempt from automatic declassification. The notification shall include:

(1) a description of the information, either by reference to information in specific records or in the form of a declassification guide;

(2) an explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and

(3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b) of this section, a specific date or event for declassification of the information. The Panel may direct the agency not to exempt the information or to declassify it at an earlier date than recommended. The agency head may appeal such a decision to the President through the Assistant to the President for National Security Affairs. The information will remain classified while such an appeal is pending.

(e) The following provisions shall apply to the onset of automatic declassification:

(1) Classified records within an integral file block, as defined in this order, that are otherwise subject to automatic declassification under this section shall not be automatically declassified until December 31 of the year that is 25 years from the date of the most recent record within the file block.

(2) By notification to the Director of the Information Security Oversight Office, before the records are subject to automatic declassification, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 5 additional years for classified information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly.

(3) By notification to the Director of the Information Security Oversight Office, before the records are subject to automatic declassification, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 3 years for classified records that have been referred or transferred to that agency by another agency less than 3 years before automatic declassification would otherwise be required.

(4) By notification to the Director of the Information Security Oversight Office, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 3 years from the date of discovery of classified records that were inadvertently not reviewed prior to the effective date of automatic declassification.

(f) Information exempted from automatic declassification under this section shall remain subject to the mandatory and systematic declassification review provisions of this order.

(g) The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this section.

(h) Records containing information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies shall be referred for review to those agencies and the information of concern shall be subject to automatic declassification only by those agencies, consistent with the provisions of subparagraphs (e)(3) and (e)(4) of this section.

**Sec. 3.4. Systematic Declassification Review.** (a) Each agency that has originated classified information under this order or its predecessors shall establish and conduct a program for systematic declassification review. This program shall apply to records of permanent historical value exempted from automatic declassification under section 3.3 of this order. Agencies shall prioritize the systematic review of records based upon the degree of researcher interest and the likelihood of declassification upon review.

(b) The Archivist shall conduct a systematic declassification review program for classified records: (1) accessioned into the National Archives as of the effective date of this order; (2) transferred to the Archivist pursuant to section 2203 of title 44, United States Code; and (3) for which the National Archives serves as the custodian for an agency or organization that has gone out of existence. This program shall apply to pertinent records no later than 25 years from the date of their creation. The Archivist shall establish priorities for the systematic review of these records based upon the degree of researcher interest and the likelihood of declassification upon review. These records shall be reviewed in accordance with the standards of this order, its implementing directives, and declassification guides provided to the Archivist by each agency that originated the records. The Director of the Information Security Oversight Office shall ensure that agencies provide the Archivist with adequate and current declassification guides.

(c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

**Sec. 3.5. Mandatory Declassification Review.** (a) Except as provided in paragraph (b) of this section, all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:

(1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;

(2) the information is not exempted from search and review under sections 105C, 105D, or 701 of the National Security Act of 1947 (50 U.S.C. 403-5c, 403-5e, and 431); and

(3) the information has not been reviewed for declassification within the past 2 years. If the agency has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the agency shall inform the requester of this fact and of the requesters appeal rights.

(b) Information originated by:

(1) the incumbent President or, in the performance of executive duties, the incumbent Vice President;

(2) the incumbent Presidents White House Staff or, in the performance of executive duties, the incumbent Vice Presidents Staff;

(3) committees, commissions, or boards appointed by the incumbent President; or

(4) other entities within the Executive Office of the President that solely advise and assist the incumbent President is exempted from the provisions of paragraph (a) of this section. However, the Archivist shall have the authority to review, downgrade, and declassify papers or records of former Presidents under the control of the Archivist pursuant to sections 2107, 2111, 2111 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or

lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Panel. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification under this order. They shall release this information unless withholding is otherwise authorized and warranted under applicable law.

(d) In accordance with directives issued pursuant to this order, agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They also shall provide a means for administratively appealing a denial of a mandatory review request, and for notifying the requester of the right to appeal a final agency decision to the Panel.

(e) After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information; the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods; and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.

**Sec. 3.6. *Processing Requests and Reviews.*** In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this order, or pursuant to the automatic declassification or systematic review provisions of this order:

(a) An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.

(b) When an agency receives any request for documents in its custody that contain information that was originally classified by another agency, or comes across such documents in the process of the automatic declassification or systematic review provisions of this order, it shall refer copies of any request and the pertinent documents to the originating agency for processing, and may, after consultation with the originating agency, inform any requester of the referral unless such association is itself classified under this order or its predecessors. In cases in which the originating agency determines in writing that a response under paragraph (a) of this section is required, the referring agency shall respond to the requester in accordance with that paragraph.

**Sec. 3.7. *Declassification Database.*** (a) The Director of the Information Security Oversight Office, in conjunction with those agencies that originate classified information, shall coordinate the linkage and effective utilization of existing agency databases of records that have been declassified and publicly released.

(b) Agency heads shall fully cooperate with the Director of the Information Security Oversight Office in these efforts.

#### PART 4—SAFEGUARDING

**Sec. 4.1. *General Restrictions on Access.*** (a) A person may have access to classified information provided that:

- (1) a favorable determination of eligibility for access has been made by an agency head or the agency heads designee;
- (2) the person has signed an approved nondisclosure agreement; and
- (3) the person has a need-to-know the information.

(b) Every person who has met the standards for access to classified information in paragraph (a) of this section shall receive contemporaneous training on the proper safeguarding of classified information and on the criminal, civil, and administrative sanctions that may be imposed on an individual who fails to protect classified information from unauthorized disclosure.

(c) Classified information shall remain under the control of the originating agency or its successor in function. An agency shall not disclose information originally classified by another agency without its authorization. An official or employee leaving agency service may not remove classified information from the agency's control.

(d) Classified information may not be removed from official premises without proper authorization.

(e) Persons authorized to disseminate classified information outside the executive branch shall ensure the protection of the information in a manner equivalent to that provided within the executive branch.

(f) Consistent with law, directives, and regulation, an agency head or senior agency official shall establish uniform procedures to ensure that automated informa-

tion systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information have controls that:

- (1) prevent access by unauthorized persons; and
- (2) ensure the integrity of the information.

(g) Consistent with law, directives, and regulation, each agency head or senior agency official shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.

(h) Consistent with directives issued pursuant to this order, an agency shall safeguard foreign government information under standards that provide a degree of protection at least equivalent to that required by the government or international organization of governments that furnished the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to United States "Confidential" information, including modified handling and transmission and allowing access to individuals with a need-to-know who have not otherwise been cleared for access to classified information or executed an approved nondisclosure agreement.

(i) Except as otherwise provided by statute, this order, directives implementing this order, or by direction of the President, classified information originating in one agency shall not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information originated within that agency. For purposes of this section, the Department of Defense shall be considered one agency. Prior consent is not required when referring records for declassification review that contain information originating in several agencies.

**Sec. 4.2. *Distribution Controls.*** (a) Each agency shall establish controls over the distribution of classified information to ensure that it is distributed only to organizations or individuals eligible for access and with a need-to-know the information.

(b) In an emergency, when necessary to respond to an imminent threat to life or in defense of the homeland, the agency head or any designee may authorize the disclosure of classified information to an individual or individuals who are otherwise not eligible for access. Such actions shall be taken only in accordance with the directives implementing this order and any procedures issued by agencies governing the classified information, which shall be designed to minimize the classified information that is disclosed under these circumstances and the number of individuals who receive it. Information disclosed under this provision or implementing directives and procedures shall not be deemed declassified as a result of such disclosure or subsequent use by a recipient. Such disclosures shall be reported promptly to the originator of the classified information. For purposes of this section, the Director of Central Intelligence may issue an implementing directive governing the emergency disclosure of classified intelligence information.

(c) Each agency shall update, at least annually, the automatic, routine, or recurring distribution of classified information that they distribute. Recipients shall cooperate fully with distributors who are updating distribution lists and shall notify distributors whenever a relevant change in status occurs.

**Sec. 4.3. *Special Access Programs.*** (a) Establishment of special access programs. Unless otherwise authorized by the President, only the Secretaries of State, Defense, and Energy, and the Director of Central Intelligence, or the principal deputy of each, may create a special access program. For special access programs pertaining to intelligence activities (including special activities, but not including military operational, strategic, and tactical programs), or intelligence sources or methods, this function shall be exercised by the Director of Central Intelligence. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only when the program is required by statute or upon a specific finding that:

- (1) the vulnerability of, or threat to, specific information is exceptional; and
- (2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure.

(b) Requirements and limitations. (1) Special access programs shall be limited to programs in which the number of persons who will have access ordinarily will be reasonably small and commensurate with the objective of providing enhanced protection for the information involved.

(2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives issued pursuant to this order.

(3) Special access programs shall be subject to the oversight program established under section 5.4(d) of this order. In addition, the Director of the Information Security Oversight Office shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this order. An agency head may limit access to a special access program to the Director and no more than one other employee of the Information Security Oversight Office, or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.

(4) The agency head or principal deputy shall review annually each special access program to determine whether it continues to meet the requirements of this order.

(5) Upon request, an agency head shall brief the Assistant to the President for National Security Affairs, or a designee, on any or all of the agency's special access programs.

(c) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

**Sec. 4.4. Access by Historical Researchers and Certain Former Government Personnel.** (a) The requirement in section 4.1(a)(3) of this order that access to classified information may be granted only to individuals who have a need-to-know the information may be waived for persons who:

(1) are engaged in historical research projects;

(2) previously have occupied policy-making positions to which they were appointed by the President under section 105(a)(2)(A) of title 3, United States Code, or the Vice President under 106(a)(1)(A) of title 3, United States Code; or

(3) served as President or Vice President.

(b) Waivers under this section may be granted only if the agency head or senior agency official of the originating agency:

(1) determines in writing that access is consistent with the interest of the national security;

(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and

(3) limits the access granted to former Presidential appointees and Vice Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee or a Vice Presidential appointee.

#### PART 5—IMPLEMENTATION AND REVIEW

**Sec. 5.1. Program Direction.** (a) The Director of the Information Security Oversight Office, under the direction of the Archivist and in consultation with the Assistant to the President for National Security Affairs, shall issue such directives as are necessary to implement this order. These directives shall be binding upon the agencies. Directives issued by the Director of the Information Security Oversight Office shall establish standards for:

(1) classification and marking principles;

(2) safeguarding classified information, which shall pertain to the handling, storage, distribution, transmittal, and destruction of and accounting for classified information;

(3) agency security education and training programs;

(4) agency self-inspection programs; and

(5) classification and declassification guides.

(b) The Archivist shall delegate the implementation and monitoring functions of this program to the Director of the Information Security Oversight Office.

**Sec. 5.2. Information Security Oversight Office.** (a) There is established within the National Archives an Information Security Oversight Office. The Archivist shall appoint the Director of the Information Security Oversight Office, subject to the approval of the President.

(b) Under the direction of the Archivist, acting in consultation with the Assistant to the President for National Security Affairs, the Director of the Information Security Oversight Office shall:

(1) develop directives for the implementation of this order;

(2) oversee agency actions to ensure compliance with this order and its implementing directives;

(3) review and approve agency implementing regulations and agency guides for systematic declassification review prior to their issuance by the agency;

(4) have the authority to conduct on-site reviews of each agency's program established under this order, and to require of each agency those reports, infor-

mation, and other cooperation that may be necessary to fulfill its responsibilities. If granting access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the President through the Assistant to the President for National Security Affairs within 60 days of the request for access. Access shall be denied pending the response;

(5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the Assistant to the President for National Security Affairs;

(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this order;

(7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this order;

(8) report at least annually to the President on the implementation of this order; and

(9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

**Sec. 5.3. Interagency Security Classification Appeals Panel.**

(a) Establishment and administration.

(1) There is established an Interagency Security Classification Appeals Panel. The Departments of State, Defense, and Justice, the Central Intelligence Agency, the National Archives, and the Assistant to the President for National Security Affairs shall each be represented by a senior-level representative who is a full-time or permanent part-time Federal officer or employee designated to serve as a member of the Panel by the respective agency head. The President shall select the Chair of the Panel from among the Panel members.

(2) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (a)(1) of this section.

(3) The Director of the Information Security Oversight Office shall serve as the Executive Secretary. The staff of the Information Security Oversight Office shall provide program and administrative support for the Panel.

(4) The members and staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panels functions.

(5) The Panel shall meet at the call of the Chair. The Chair shall schedule meetings as may be necessary for the Panel to fulfill its functions in a timely manner.

(6) The Information Security Oversight Office shall include in its reports to the President a summary of the Panels activities.

(b) Functions. The Panel shall:

(1) decide on appeals by persons who have filed classification challenges under section 1.8 of this order;

(2) approve, deny, or amend agency exemptions from automatic declassification as provided in section 3.3 of this order; and

(3) decide on appeals by persons or entities who have filed requests for mandatory declassification review under section 3.5 of this order.

(c) Rules and procedures. The Panel shall issue bylaws, which shall be published in the **Federal Register**. The bylaws shall establish the rules and procedures that the Panel will follow in accepting, considering, and issuing decisions on appeals. The rules and procedures of the Panel shall provide that the Panel will consider appeals only on actions in which:

(1) the appellant has exhausted his or her administrative remedies within the responsible agency;

(2) there is no current action pending on the issue within the Federal courts; and

(3) the information has not been the subject of review by the Federal courts or the Panel within the past 2 years.

(d) Agency heads shall cooperate fully with the Panel so that it can fulfill its functions in a timely and fully informed manner. An agency head may appeal a decision of the Panel to the President through the Assistant to the President for National Security Affairs. The Panel shall report to the President through the Assistant to the President for National Security Affairs any instance in which it believes that an agency head is not cooperating fully with the Panel.

(e) The Panel is established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to pro-

tect the national security of the United States. Panel decisions are committed to the discretion of the Panel, unless changed by the President.

(f) Notwithstanding paragraphs (a) through (e) of this section, whenever the Panel reaches a conclusion that information owned or controlled by the Director of Central Intelligence (Director) should be declassified, and the Director notifies the Panel that he objects to its conclusion because he has determined that the information could reasonably be expected to cause damage to the national security and to reveal (1) the identity of a human intelligence source, or (2) information about the application of an intelligence source or method (including any information that concerns, or is provided as a result of, a relationship with a cooperating intelligence element of a foreign government), the information shall remain classified unless the Director's determination is appealed to the President, and the President reverses the determination.

**Sec. 5.4. General Responsibilities.** Heads of agencies that originate or handle classified information shall:

(a) demonstrate personal commitment and commit senior management to the successful implementation of the program established under this order;

(b) commit necessary resources to the effective implementation of the program established under this order;

(c) ensure that agency records systems are designed and maintained to optimize the safeguarding of classified information, and to facilitate its declassification under the terms of this order when it no longer meets the standards for continued classification; and

(d) designate a senior agency official to direct and administer the program, whose responsibilities shall include:

(1) overseeing the agency's program established under this order, provided, an agency head may designate a separate official to oversee special access programs authorized under this order. This official shall provide a full accounting of the agency's special access programs at least annually;

(2) promulgating implementing regulations, which shall be published in the **Federal Register** to the extent that they affect members of the public;

(3) establishing and maintaining security education and training programs;

(4) establishing and maintaining an ongoing self-inspection program, which shall include the periodic review and assessment of the agency's classified product;

(5) establishing procedures to prevent unnecessary access to classified information, including procedures that:

(A) require that a need for access to classified information is established before initiating administrative clearance procedures; and

(B) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs;

(6) developing special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;

(7) ensuring that the performance contract or other system used to rate civilian or military personnel performance includes the management of classified information as a critical element or item to be evaluated in the rating of:

(A) original classification authorities;

(B) security managers or security specialists; and

(C) all other personnel whose duties significantly involve the creation or handling of classified information;

(8) accounting for the costs associated with the implementation of this order, which shall be reported to the Director of the Information Security Oversight Office for publication; and

(9) assigning in a prompt manner agency personnel to respond to any request, appeal, challenge, complaint, or suggestion arising out of this order that pertains to classified information that originated in a component of the agency that no longer exists and for which there is no clear successor in function.

**Sec. 5.5. Sanctions.** (a) If the Director of the Information Security Oversight Office finds that a violation of this order or its implementing directives has occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.

(b) Officers and employees of the United States Government, and its contractors, licensees, certificate holders, and grantees shall be subject to appropriate sanctions if they knowingly, willfully, or negligently:

(1) disclose to unauthorized persons information properly classified under this order or predecessor orders;

(2) classify or continue the classification of information in violation of this order or any implementing directive;

(3) create or continue a special access program contrary to the requirements of this order; or

(4) contravene any other provision of this order or its implementing directives.

(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.

(d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this order.

(e) The agency head or senior agency official shall:

(1) take appropriate and prompt corrective action when a violation or infraction under paragraph (b) of this section occurs; and

(2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b)(1), (2), or

(3) of this section occurs.

#### PART 6—GENERAL PROVISIONS

**Sec. 6.1. Definitions.** For purposes of this order:

(a) "Access" means the ability or opportunity to gain knowledge of classified information.

(b) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105; any "Military department" as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into the possession of classified information.

(c) "Automated information system" means an assembly of computer hardware, software, or firmware configured to collect, create, communicate, compute, disseminate, process, store, or control data or information.

(d) "Automatic declassification" means the declassification of information based solely upon:

(1) the occurrence of a specific date or event as determined by the original classification authority; or

(2) the expiration of a maximum time frame for duration of classification established under this order.

(e) "Classification" means the act or process by which information is determined to be classified information.

(f) "Classification guidance" means any instruction or source that prescribes the classification of specific information.

(g) "Classification guide" means a documentary form of classification guidance issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(h) "Classified national security information" or "classified information" means information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(i) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(j) "Damage to the national security" means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

(k) "Declassification" means the authorized change in the status of information from classified information to unclassified information.

(l) "Declassification authority" means:

(1) the official who authorized the original classification, if that official is still serving in the same position;

(2) the originator's current successor in function;

(3) a supervisory official of either; or

(4) officials delegated declassification authority in writing by the agency head or the senior agency official.

(m) "Declassification guide" means written instructions issued by a declassification authority that describes the elements of information regarding a specific subject that may be declassified and the elements that must remain classified.

(n) "Derivative classification" means the incorporating, paraphrasing, restating, or generating in new form information that is already classified, and marking the

newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(o) "Document" means any recorded information, regardless of the nature of the medium or the method or circumstances of recording.

(p) "Downgrading" means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.

(q) "File series" means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access or use.

(r) "Foreign government information" means:

(1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) information received and treated as "foreign government information" under the terms of a predecessor order.

(s) "Information" means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. "Control" means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

(t) "Infraction" means any knowing, willful, or negligent action contrary to the requirements of this order or its implementing directives that does not constitute a "violation," as defined below.

(u) "Integral file block" means a distinct component of a file series, as defined in this section, that should be maintained as a separate unit in order to ensure the integrity of the records. An integral file block may consist of a set of records covering either a specific topic or a range of time such as presidential administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group.

(v) "Integrity" means the state that exists when information is unchanged from its source and has not been accidentally or intentionally modified, altered, or destroyed.

(w) "Mandatory declassification review" means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of this order.

(x) "Multiple sources" means two or more source documents, classification guides, or a combination of both.

(y) "National security" means the national defense or foreign relations of the United States.

(z) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(aa) "Network" means a system of two or more computers that can exchange data or information.

(bb) "Original classification" means an initial determination that information requires, in the interest of the national security, protection against unauthorized disclosure.

(cc) "Original classification authority" means an individual authorized in writing, either by the President, the Vice President in the performance of executive duties, or by agency heads or other officials designated by the President, to classify information in the first instance.

(dd) "Records" means the records of an agency and Presidential papers or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the contract, license, certificate, or grant.

(ee) "Records having permanent historical value" means Presidential papers or Presidential records and the records of an agency that the Archivist has determined should be maintained permanently in accordance with title 44, United States Code.

(ff) "Records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations.

(gg) "Safeguarding" means measures and controls that are prescribed to protect classified information.

(hh) "Self-inspection" means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the program established under this order and its implementing directives.

(ii) "Senior agency official" means the official designated by the agency head under section 5.4(d) of this order to direct and administer the agency's program under which information is classified, safeguarded, and declassified.

(jj) "Source document" means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(kk) "Special access program" means a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

(ll) "Systematic declassification review" means the review for declassification of classified information contained in records that have been determined by the Archivist to have permanent historical value in accordance with title 44, United States Code.

(mm) "Telecommunications" means the preparation, transmission, or communication of information by electronic means.

(nn) "Unauthorized disclosure" means a communication or physical transfer of classified information to an unauthorized recipient.

(oo) "Violation" means:

(1) any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information;

(2) any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of this order or its implementing directives; or

(3) any knowing, willful, or negligent action to create or continue a special access program contrary to the requirements of this order.

(pp) "Weapons of mass destruction" means chemical, biological, radiological, and nuclear weapons.

**Sec. 6.2. General Provisions.** (a) Nothing in this order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) Nothing in this order limits the protection afforded any information by other provisions of law, including the Constitution, Freedom of Information Act exemptions, the Privacy Act of 1974, and the National Security Act of 1947, as amended. This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its departments, agencies, officers, employees, or agents. The foregoing is in addition to the specific provisos set forth in sections 3.1(b) and 5.3(e) of this order."

(d) Executive Order 12356 of April 6, 1982, was revoked as of October 14, 1995.

**Sec. 6.3. Effective Date.** This order is effective immediately, except for section 1.6, which shall become effective 180 days from the date of this order.

GEORGE W. BUSH



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**IV. ESTABLISHMENT OF CONGRESSIONAL  
INTELLIGENCE COMMITTEES**

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## RULES OF THE HOUSE OF REPRESENTATIVES

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### RULE X.

#### ORGANIZATION OF COMMITTEES.

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#### ***Permanent Select Committee on Intelligence***

11. (a)(1) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the "select committee"). The select committee shall be composed of not more than 18 Members, Delegates, or the Resident Commissioner, of whom not more than 10 may be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

- (A) the Committee on Appropriations;
- (B) the Committee on Armed Services;
- (C) the Committee on International Relations; and
- (D) the Committee on the Judiciary.

(2) The Speaker and the Minority Leader shall be ex officio members of the select committee but shall have no vote in the select committee and may not be counted for purposes of determining a quorum thereof.

(3) The Speaker and Minority Leader each may designate a member of his leadership staff to assist him in his capacity as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the select committee and subject to the same security clearance and confidentiality requirements as employees of the select committee under this clause.

(4)(A) Except as permitted by subdivision (B), a Member, Delegate, or Resident Commissioner, other than the Speaker or the Minority Leader, may not serve as a member of the select committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(B) In the case of a Member, Delegate, or Resident Commissioner appointed to serve as the chairman or the ranking minority member of the select committee, tenure on the select committee shall not be limited.

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions, memorials, and other matters relating to the following:

- (A) The Central Intelligence Agency, the Director of Central Intelligence, and the National Foreign Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of Central Intelligence, and the National Foreign Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

(2) Proposed legislation initially reported by the select committee (other than provisions solely involving matters specified in subparagraph (1)(A) or subparagraph (1)(D)(i)) containing any matter otherwise within the jurisdiction of a standing committee shall be referred by the Speaker to that standing committee. Proposed legislation initially reported by another committee that contains matter within the jurisdiction of the select committee shall be referred by the Speaker to the select committee if requested by the chairman of the select committee.

(3) Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.

(4) Nothing in this clause shall be construed as amending, limiting, or otherwise changing the authority of a standing committee to obtain full and prompt access to the product of the intelligence and intelligence-related activities of a department or agency of the Government relevant to a matter otherwise within the jurisdiction of that committee.

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such report, the select committee shall proceed in a manner consistent with paragraph (g) to protect national security.

(2) The select committee shall obtain annual reports from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence and intelligence-related activities of the agency or department con-

cerned and the intelligence and intelligence-related activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of persons engaged in intelligence or intelligence-related activities for the United States or the divulging of intelligence methods employed or the sources of information on which the reports are based or the amount of funds authorized to be appropriated for intelligence and intelligence-related activities.

(3) Within six weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as the Committee on the Budget may request, the select committee shall submit to the Committee on the Budget the views and estimates described in section 301(d) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

(d)(1) Except as specified in subparagraph (2), clauses 8(a), (b), and (c) and 9(a), (b), and (c) of this rule, and clauses 1, 2, and 4 of rule XI shall apply to the select committee to the extent not inconsistent with this clause.

(2) Notwithstanding the requirements of the first sentence of clause 2(g)(2) of rule XI, in the presence of the number of members required under the rules of the select committee for the purpose of taking testimony or receiving evidence, the select committee may vote to close a hearing whenever a majority of those present determines that the testimony or evidence would endanger the national security.

(e) An employee of the select committee, or a person engaged by contract or otherwise to perform services for or at the request of the select committee, may not be given access to any classified information by the select committee unless such employee or person has—

(1) agreed in writing and under oath to be bound by the Rules of the House, including the jurisdiction of the Committee on Standards of Official Conduct and of the select committee concerning the security of classified information during and after the period of his employment or contractual agreement with the select committee; and

(2) received an appropriate security clearance, as determined by the select committee in consultation with the Director of Central Intelligence, that is commensurate with the sensitivity of the classified information to which such employee or person will be given access by the select committee.

(f) The select committee shall formulate and carry out such rules and procedures as it considers necessary to prevent the disclosure, without the consent of each person concerned, of information in the possession of the select committee that unduly infringes on the privacy or that violates the constitutional rights of such person. Nothing herein shall be construed to prevent the select committee from publicly disclosing classified information in a case in which it determines that national interest in the disclosure of classified information clearly outweighs any infringement on the privacy of a person.

(g)(1) The select committee may disclose publicly any information in its possession after a determination by the select committee that the public interest would be served by such disclosure. With respect to the disclosure of information for which this paragraph requires action by the select committee—

(A) the select committee shall meet to vote on the matter within five days after a member of the select committee requests a vote; and

(B) a member of the select committee may not make such a disclosure before a vote by the select committee on the matter, or after a vote by the select committee on the matter except in accordance with this paragraph.

(2)(A) In a case in which the select committee votes to disclose publicly any information that has been classified under established security procedures, that has been submitted to it by the executive branch, and that the executive branch requests be kept secret, the select committee shall notify the President of such vote.

(B) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of the vote to disclose is transmitted to the President unless, before the expiration of the five-day period, the President, personally in writing, notifies the select committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the national interest of the United States posed by the disclosure is of such gravity that it outweighs any public interest in the disclosure.

(C) If the President, personally in writing, notifies the select committee of his objections to the disclosure of information as provided in subdivision (B), the select committee may, by majority vote, refer the question of the disclosure of such information, with a recommendation thereon, to the House. The select committee may not publicly disclose such information without leave of the House.

(D) Whenever the select committee votes to refer the question of disclosure of any information to the House under subdivision (C), the chairman shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(E) If the chairman of the select committee does not offer in the House a motion to consider in closed session a matter reported under subdivision (D) within four calendar days on which the House is in session after the recommendation described in subdivision (C) is reported, then such a motion shall be privileged when offered by a Member, Delegate, or Resident Commissioner. In either case such a motion shall be decided without debate or intervening motion except one that the House adjourn.

(F) Upon adoption by the House of a motion to resolve into closed session as described in subdivision (E), the Speaker may declare a recess subject to the call of the Chair. At the expiration of the recess, the pending question, in closed session, shall be, "Shall the House approve the recommendation of the select committee?"

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chairman and ranking minority member of the select committee. After such debate the previous question shall be considered as ordered

on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Standards of Official Conduct shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Standards of Official Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless

the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence and intelligence-related activities of the Department of State.

(6) The intelligence and intelligence-related activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(j)(1) In this clause the term “intelligence and intelligence-related activities” includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term “department or agency” includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

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**RULE XXIII.**
**CODE OF OFFICIAL CONDUCT.**

There is hereby established by and for the House the following code of conduct, to be known as the "Code of Official Conduct":

1. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House.

\* \* \* \* \*

13. Before a Member, Delegate, Resident Commissioner, officer, or employee of the House may have access to classified information, the following oath (or affirmation) shall be executed:

"I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Representatives, except as authorized by the House of Representatives or in accordance with its Rules."

Copies of the executed oath (or affirmation) shall be retained by the Clerk as part of the records of the House. The Clerk shall make signatures a matter of public record, causing the names of each Member, Delegate, or Resident Commissioner who has signed the oath during a week (if any) to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House.

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## S. RES. 400 FROM THE 94TH CONGRESS

### A RESOLUTION ESTABLISHING A SELECT COMMITTEE ON INTELLIGENCE

*Resolved*, That it is the purpose of this resolution to establish a new select committee of the Senate, to be known as the Select Committee on Intelligence, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs. In carrying out this purpose, the Select Committee on Intelligence shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 2. (a)(1) There is hereby established a select committee to be known as the Select Committee on Intelligence (hereinafter in this resolution referred to as the "select committee"). The select committee shall be composed of fifteen members appointed as follows:

- (A) two members from the Committee on Appropriations;
  - (B) two members from the Committee on Armed Services;
  - (C) two members from the Committee on Foreign Relations;
  - (D) two members from the Committee on the Judiciary;
- and
- (E) seven members to be appointed from the Senate at large.

(2) Members appointed from each committee named in clauses (A) through (D) of paragraph (1) shall be evenly divided between the two major political parties and shall be appointed by the President pro tempore of the Senate upon the recommendations of the majority and minority leaders of the Senate. Four of the members appointed under clause (E) of paragraph (1) shall be appointed by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate and three shall be appointed by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate.

(3) The majority leader of the Senate and the minority leader of the Senate shall be ex officio members of the select committee but shall have no vote in the committee and shall not be counted for purposes of determining a quorum.

(b) No Senator may serve on the select committee for more than eight years of continuous service, exclusive of service by any Senator on such committee during the Ninety-fourth Congress. To the greatest extent practicable, one-third of the Members of the Senate appointed to the select committee at the beginning of the Ninety-seventh Congress and each Congress thereafter shall be Members of the Senate who did not serve on such committee during the preceding Congress.

(c) At the beginning of each Congress, the Members of the Senate who are members of the majority party of the Senate shall elect a chairman for the select committee, and the Members of the Senate who are from the minority party of the Senate shall elect a vice chairman for such committee. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. Neither the chairman nor the vice chairman of the select committee shall at the same time serve as chairman or ranking minority member of any other committee referred to in paragraph 6(f) of rule XXV of the Standing Rules of the Senate.

(d) For the purposes of paragraph 6(a) of rule XXV of the Standing Rules of the Senate, service of a Senator as a member of the select committee shall not be taken into account.

SEC. 3. (a) There shall be referred to the select committee all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(1) The Central Intelligence Agency and the Director of Central Intelligence.

(2) Intelligence activities of all other departments and agencies of the Government, including, but not limited to, the intelligence activities of the Defense Intelligence Agency, the National Security Agency, and other agencies of the Department of Defense; the Department of State; the Department of Justice; and the Department of the Treasury.

(3) The organization or reorganization of any department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence activities.

(4) Authorization for appropriations, both direct and indirect, for the following:

(A) The Central Intelligence Agency and Director of Central Intelligence.

(B) The Defense Intelligence Agency.

(C) The National Security Agency.

(D) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(E) The intelligence activities of the Department of State.

(F) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(G) Any department, agency, or subdivision which is the successor to any agency named in clause (A), (B), or (C); and the activities of any department, agency, or subdivision which is the successor to any department, agency, bureau, or subdivision named in clause (D), (E), or (F) to the extent that the activities of such successor department,

agency, or subdivision are activities described in clause (D), (E), or (F).

(b) Any proposed legislation reported by the select committee, except any legislation involving matters specified in clause (1) or (4)(A) of subsection (a), containing any matter otherwise within the jurisdiction of any standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee for its consideration of such matter and be reported to the Senate by such standing committee within thirty days after the day on which such proposed legislation is referred to such standing committee; and any proposed legislation reported by any committee, other than the select committee, which contains any matter within the jurisdiction of the select committee shall, at the request of the chairman of the select committee, be referred to the select committee for its consideration of such matter and be reported to the Senate by the select committee within thirty days after the day on which such proposed legislation is referred to such committee. In any case in which a committee fails to report any proposed legislation referred to it within the time limit prescribed herein, such committee shall be automatically discharged from further consideration of such proposed legislation on the thirtieth day following the day on which such proposed legislation is referred to such committee unless the Senate provides otherwise. In computing any thirty-day period under this paragraph there shall be excluded from such computation any days on which the Senate is not in session.

(c) Nothing in this resolution shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee.

(d) Nothing in this resolution shall be construed as amending, limiting, or otherwise changing the authority of any standing committee of the Senate to obtain full and prompt access to the product of the intelligence activities of any department or agency of the Government relevant to a matter otherwise within the jurisdiction of such committee.

SEC. 4. (a) The select committee, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters requiring the attention of the Senate or such other committee or committees. In making such reports, the select committee shall proceed in a manner consistent with section 8(c)(2) to protect national security.

(b) The select committee shall obtain an annual report from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence activities of the agency or department concerned and the intelligence activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made available to the public at the discretion of the select committee.

Nothing herein shall be construed as requiring the public disclosure in such reports of the names of individuals engaged in intelligence activities for the United States or the divulging of intelligence methods employed or the sources of information on which such reports are based or the amount of funds authorized to be appropriated for intelligence activities.

(c) On or before March 15 of each year, the select committee shall submit to the Committee on the Budget of the Senate the views and estimates described in section 301(c) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

SEC. 5. (a) For the purposes of this resolution, the select committee is authorized in its discretion (1) to make investigations into any matter within its jurisdiction, (2) to make expenditures from the contingent fund of the Senate, (3) to employ personnel, (4) to hold hearings, (5) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (6) to require, by subpoena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (7) to take depositions and other testimony, (8) to procure the service of consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, and (9) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(b) The chairman of the select committee or any member thereof may administer oaths to witnesses.

(c) Subpenas authorized by the select committee may be issued over the signature of the chairman, the vice chairman, or any member of the select committee designated by the chairman, and may be served by any person designated by the chairman or any member signing the subpoena.

SEC. 6. No employee of the select committee or any person engaged by contract or otherwise to perform service for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing and under oath to be bound by the rules of the Senate (including the jurisdiction of the Select Committee on Standards and Conduct) and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of Central Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 7. The select committee shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to

prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

SEC. 8. (a) The select committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote. No member of the select committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this section.

(b)(1) In any case in which the select committee votes to disclose publicly any information which has been classified under established security procedures, which has been submitted to it by the executive branch, and which the executive branch requests be kept secret, such committee shall notify the President of such vote.

(2) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of such vote is transmitted to the President, unless, prior to the expiration of such five-day period, the President, personally in writing, notifies the committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the national interest of the United States posed by such disclosure is of such gravity that it outweighs any public interest in the disclosure.

(3) If the President, personally in writing, notifies the select committee of his objections to the disclosure of such information as provided in paragraph (2), such committee may, by majority vote, refer the question of the disclosure of such information to the Senate for consideration. The committee shall not publicly disclose such information without leave of the Senate.

(4) Whenever the select committee votes to refer the question of disclosure of any information to the Senate under paragraph (3), the chairman shall, not later than the first day on which the Senate is in session following the day on which the vote occurs, report the matter to the Senate for its consideration.

(5) One hour after the Senate convenes on the fourth day on which the Senate is in session following the day on which any such matter is reported to the Senate, or at such earlier time as the majority leader and the minority leader of the Senate jointly agree upon in accordance with section 133(f) of the Legislative Reorganization Act of 1946, the Senate shall go into closed session and the matter shall be the pending business. In considering the matter in closed session the Senate may—

(A) approve the public disclosure of all or any portion of the information in question, in which case the committee shall publicly disclose the information ordered to be disclosed,

(B) disapprove the public disclosure of all or any portion of the information in question, in which case the committee shall not publicly disclose the information ordered not to be disclosed, or

(C) refer all or any portion of the matter back to the committee, in which case the committee shall make the final determination with respect to the public disclosure of the information in question.

Upon conclusion of the consideration of such matter in closed session, which may not extend beyond the close of the ninth day on which the Senate is in session following the day on which such matter was reported to the Senate, or the close of the fifth day following the day agreed upon jointly by the majority and minority leaders in accordance with section 133(f) of the Legislative Reorganization Act of 1946 (whichever the case may be), the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by one or more of the means specified in clauses (A), (B), and (C) of the second sentence of this paragraph. Any vote of the Senate to disclose any information pursuant to this paragraph shall be subject to the right of a Member of the Senate to move for reconsideration of the vote within the time and pursuant to the procedures specified in rule XIII of the Standing Rules of the Senate, and the disclosure of such information shall be made consistent with that right.

(c)(1) No information in the possession of the select committee relating to the lawful intelligence activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to subsection (a) or (b) of this section, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

(2) The select committee may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee which, receives any information under this subsection, shall disclose such information except in a closed session of the Senate.

(d) It shall be the duty of the Select Committee on Standards and Conduct to investigate any unauthorized disclosure of intelligence information by a Member, officer or employee of the Senate in violation of subsection (c) and to report to the Senate concerning any allegation which it finds to be substantiated.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure,

removal from committee membership, or expulsion from the Senate, in the case of Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

SEC. 9. The select committee is authorized to permit any personal representative of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

SEC. 10. Upon expiration of the Select Committee on Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress, all records, files, documents, and other materials in the possession, custody, or control of such committee, under appropriate conditions established by it, shall be transferred to the select committee.

SEC. 11. (a) It is the sense of the Senate that the head of each department and agency of the United States should keep the select committee fully and currently informed with respect to intelligence activities, including any significant anticipated activities, which are the responsibility of or engaged in by such department or agency: *Provided*, That this does not constitute a condition precedent to the implementation of any such anticipated intelligence activity.

(b) It is the sense of the Senate that the head of any department or agency of the United States involved in any intelligence activities should furnish any information or documentation in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the select committee with respect to any matter within such committee's jurisdiction.

(c) It is the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the select committee any and all intelligence activities which constitute violations of the constitutional rights of any person, violations of law, or violations of Executive orders, Presidential directives, or departmental or agency rules or regulations; each department and agency should further report to such committee what actions have been taken or are expected to be taken by the departments or agencies with respect to such violations.

SEC. 12. Subject to the Standing Rules of the Senate, no funds shall be appropriated for any fiscal year beginning after September 30, 1976, with the exception of a continuing bill or resolution, or amendment thereto, or conference report thereon, to, or for use of, any department or agency of the United States to carry out any of the following activities, unless such funds shall have been previously authorized by a bill or joint resolution passed by the Senate during the same or preceding fiscal year to carry out such activity for such fiscal year:

- (1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.
- (2) The activities of the Defense Intelligence Agency.
- (3) The activities of the National Security Agency.
- (4) The intelligence activities of other agencies and subdivisions of the Department of Defense.
- (5) The intelligence activities of the Department of State.
- (6) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

SEC. 13. (a) The select committee shall make a study with respect to the following matters, taking into consideration with respect to each such matter, all relevant aspects of the effectiveness of planning, gathering, use, security, and dissemination of intelligence:

(1) the quality of the analytical capabilities of United States foreign intelligence agencies and means for integrating more closely analytical intelligence and policy formulation;

(2) the extent and nature of the authority of the departments and agencies of the executive branch to engage in intelligence activities and the desirability of developing charters for each intelligence agency or department;

(3) the organization of intelligence activities in the executive branch to maximize the effectiveness of the conduct, oversight, and accountability of intelligence activities; to reduce duplication or overlap; and to improve the morale of the personnel of the foreign intelligence agencies;

(4) the conduct of covert and clandestine activities and the procedures by which Congress is informed of such activities;

(5) the desirability of changing any law, Senate rule or procedure, or any Executive order, rule, or regulation to improve the protection of intelligence secrets and provide for disclosure of information for which there is no compelling reason for secrecy;

(6) the desirability of establishing a standing committee of the Senate on intelligence activities;

(7) the desirability of establishing a joint committee of the Senate and the House of Representatives on intelligence activities in lieu of having separate committees in each House of Congress, or of establishing procedures under which separate committees on intelligence activities of the two Houses of Congress would receive joint briefings from the intelligence agencies and coordinate their policies with respect to the safeguarding of sensitive intelligence information;

(8) the authorization of funds for the intelligence activities of the Government and whether disclosure of any of the amounts of such funds is in the public interest; and

(9) the development of a uniform set of definitions for terms to be used in policies or guidelines which may be adopted by the executive or legislative branches to govern, clarify, and strengthen the operation of intelligence activities.

(b) The select committee may, in its discretion, omit from the special study required by this section any matter it determines has been adequately studied by the Select Committee To Study Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress.

(c) The select committee shall report the results of the study provided for by this section to the Senate, together with any recommendations for legislative or other actions it deems appropriate, no later than July 1, 1977, and from time to time thereafter as it deems appropriate.

SEC. 14. (a) As used in this resolution, the term "intelligence activities" includes (1) the collection, analysis, production, dissemination, or use of information which relates to any foreign country, or any government, political group, party, military force, move-

ment, or other association in such foreign country, and which relates to the defense, foreign policy, national security, or related policies of the United States, and other activity which is in support of such activities; (2) activities taken to counter similar activities directed against the United States; (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, military force, movement or other association; (4) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by any department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States, and covert or clandestine activities directed against such persons. Such term does not include tactical foreign military intelligence serving no national policymaking function.

(b) As used in this resolution, the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(c) For purposes of this resolution, reference to any department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that such successor engages in intelligence activities now conducted by the department, agency, bureau, or subdivision referred to in this resolution.

SEC. 15. For the period from the date this resolution is agreed to through February 28, 1977, the expenses of the select committee under this resolution shall not exceed \$275,000, of which amount not to exceed \$30,000 shall be available for the procurement of the services of individual consultants, or organizations thereof, as authorized by section 202(i) of the Legislative Reorganization Act of 1946. Expenses of the select committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the select committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SEC. 16. Nothing in this resolution shall be construed as constituting acquiescence by the Senate in any practice, or in the conduct of any activity, not otherwise authorized by law.