

1 **SEC. 903. REVISION OF SECRETARY OF DEFENSE AUTHORITY TO ENGAGE IN**
2 **COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE**
3 **COLLECTION ACTIVITIES AND MILITARY OPERATIONS ABROAD.**

4 (a) EXTENSION OF AUTHORITY TO INCLUDE ACTIVITIES UNDERTAKEN AS SECURITY FOR
5 MILITARY OPERATIONS.—

6 (1) AUTHORITY.—Subsection (a) of section 431 of title 10, United States Code, is
7 amended by inserting “and military operations” after “intelligence collection activities”.

8 (2) CLERICAL AMENDMENTS.—(A) The heading of such section is amended to
9 read as follows:

10 **“§ 431. Authority to engage in commercial activities as security for intelligence collection**
11 **activities and military operations abroad”.**

12 (B) The item relating to that section in the table of sections at the beginning of
13 subchapter II of chapter 21 of such chapter is amended to read as follows:

“431. Authority to engage in commercial activities as security for intelligence collection activities and military
operations abroad.”.

14 (b) REPEAL OF DESIGNATION OF DEFENSE INTELLIGENCE AGENCY AS REQUIRED
15 OVERSIGHT AUTHORITY WITHIN DEPARTMENT OF DEFENSE.—Section 436(4) of such title is
16 amended—

17 (1) by striking “within the Defense Intelligence Agency” and inserting “within the
18 Department of Defense”; and

19 (2) by striking “management and supervision” and inserting “oversight”.

20 (c) TECHNICAL AMENDMENTS.—Section 437 of such title is amended—

21 (1) in subsections (a) and (b), by inserting “congressional” before “intelligence
22 committees”; and

1 (2) by adding at the end the following new subsection:
2 “(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term
3 ‘congressional intelligence committees’ has the meaning given that term in section 3 of the
4 National Security Act of 1947 (50 U.S.C. 401a).”.

Section-by-Section Analysis

This proposal would amend current statutory authority for the use by the Department of Defense (DoD) of intelligence commercial activities (ICAs) as security for intelligence collection activities by (1) expanding the authority to permit the Secretary to conduct commercial activities as security for military operations abroad; and (2) deleting the statutory direction that the Secretary’s oversight office for such activities be located within DIA.

Subsection (a) would expand the authority to permit the Secretary to conduct commercial activities as security for military operations abroad. Statutory authority for DoD to conduct commercial activities was first enacted in 1992. Since then, the conflict with al Qaida and its affiliates, and other developments, have required the regular conduct of small-scale clandestine military operations to prepare the battlefield for military operations against terrorists and their sponsors. Expansion of this authority is necessary to permit DoD to conduct revenue-generating commercial activities to protect such operations and would provide an important safeguard for U.S. military forces conducting hazardous operations abroad.

Subsection (b) would delete the statutory direction that the Secretary’s oversight office for such activities be located within DIA. The current statute was enacted before Congress established the Under Secretary of Defense for Intelligence to direct and oversee all intelligence, intelligence-related, and security programs of the Department. The Secretary has directed that the USD(I) oversee these commercial activities. These developments have made the current statutory mandate for an oversight office in DIA an unwarranted limitation on the discretion of the Secretary and the Under Secretary in managing and overseeing the commercial activities program.

Subsection (c) would make technical amendments to section 437 of title 10 to clarify that the definition of "congressional intelligence committees" under section 3 of the National Security Act of 1947 applies throughout section 437.

Additional classified background information regarding the Department’s conduct of its commercial cover program will be made available to the armed services committees.

Budget Implications: There is no cost implication associated with this proposal. 10 U.S.C. 432 provides that funds generated by ICAs may be used to offset necessary and reasonable expenses arising from that activity, with excess funds to be deposited in the Treasury as miscellaneous receipts.

Changes to Existing Law: This proposal would make the following changes to title 10, United States Code:

TITLE 10 - ARMED FORCES

CHAPTER 21 - DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

SUBCHAPTER II - INTELLIGENCE COMMERCIAL ACTIVITIES

§ 431. Authority to engage in commercial activities as security for intelligence collection activities and military operations abroad

(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 and military operations abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, 2015.

(b) INTERAGENCY COORDINATION AND SUPPORT.—Any such activity shall—

(1) be coordinated with, and (where appropriate) be supported by, the Director of the Central Intelligence Agency; 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.

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§ 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~~ the Department of Defense to be responsible for the ~~management and supervision oversight~~ 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.

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§ 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 congressional 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 congressional 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.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, 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).