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HOUSE OF REPRESENTATIVES
REPORT
103–753

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1995

SEPTEMBER 27, 1994.—Ordered to be printed

Mr. GLICKMAN, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 4299]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4299), 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 the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

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".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 1995 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 National Reconnaissance Office.
(6) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(7) The Department of State.
(8) The Department of the Treasury.
(9) The Department of Energy.
(10) The Federal Bureau of Investigation.
(11) The Drug Enforcement Administration.
(12) The Central Imagery Office.

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, 1995, 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. 4299 of the One Hundred Third 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. 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 1995 the sum of $86,900,000. Within such amounts authorized, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for the Advanced Research and Development Committee and the Environmental Task Force shall remain available until September 30, 1996.

(b) AUTHORIZED PERSONNEL LEVELS.—The Community Management Account of the Director of Central Intelligence is authorized 241 full-time personnel as of September 30, 1995. Such personnel of the Community Management Account may be permanent employees of the Community Management Account or personnel detailed from other elements of the United States Government.

(c) REIMBURSEMENT.—During fiscal year 1995, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Community Management Staff 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.

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 1995 the sum of $198,000,000.

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 laws of the United States.

SEC. 303. 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 the operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, should award contracts in a manner that would maximize the procurement of products properly designated as having been made in the United States.

SEC. 304. REPEAL OF RESTRICTION ON INTELLIGENCE COOPERATION WITH SOUTH AFRICA.

Section 107 of the Intelligence Authorization Act for Fiscal Year 1987 (Public Law 99–569) is repealed.

SEC. 305. REPORT REGARDING MANDATORY RETIREMENT FOR EXPIRATION OF TIME IN CLASS.

(a) REPORT REQUIRED.—Not later than December 1, 1994, the Director of Central Intelligence shall submit a report to the committees of Congress specified in subsection (d) on the advisability of providing for mandatory retirement for expiration of time in class in a manner comparable to that established by the applicable provisions of section 607 of the Foreign Service Act of 1980 (22 U.S.C. 4007) for all civilian employees of the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Reconnaissance Office, the Central Imagery Office, and the

intelligence elements of the Army, Navy, Air Force, and Marine Corps.

(b) REQUIRED CONTENTS.—The report required by subsection (a) shall include—

(1) an assessment of the feasibility of instituting such a mandatory retirement policy and of alternative means to achieve the objectives of such a mandatory retirement policy;

(2) an assessment which the Secretary of Defense shall conduct of the impact of such a mandatory retirement policy for intelligence community civilian employees on all other Department of Defense civilian employees; and

(3) any appropriate legislative recommendations.

(c) COORDINATION.—The report required by subsection (a) shall be coordinated as appropriate with elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(4)).

(d) COMMITTEES OF CONGRESS.—The committees of Congress referred to in subsection (a) are the Committees on Armed Services of the Senate and House of Representatives, the Defense Subcommittees of the Committees on Appropriations of the Senate and House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. ILLNESS OR INJURY REQUIRING HOSPITALIZATION.

Section 4(a)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403(e)(a)) is amended—

(1) in subparagraph (A)—

(A) by striking ", not the result of vicious habits, intemperance, or misconduct on his part,";

(B) by striking "he shall deem" and inserting "the Director deems";

(C) by striking "section 10 of the Act of March 3, 1933 (47 Stat. 1516; 5 U.S.C. 73b)" and inserting "section 5731 of title 5, United States Code";

(D) by striking "his recovery" and inserting "the recovery of such officer or employee"; and

(E) by striking "his return to his post" and inserting "the return to the post of duty of such officer or employee";

(2) in subparagraph (B), by striking "his opinion" both places it appears and inserting "the opinion of the Director"; and

(3) in subparagraph (C), by striking ", not the result of vicious habits, intemperance, or misconduct on his part,".

SEC. 402. INSPECTOR GENERAL OF THE CENTRAL INTELLIGENCE AGENCY.

Section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q) is amended—

(1) in subsection (b)(1)—

(A) by striking "or" after "analysis,"; and

(B) by striking the period at the end thereof and inserting ", or auditing.";

(2) in subsection (c)(1), by striking "to conduct" and inserting "to plan, conduct";

(3) in subsection (d)(1)—

(A) by striking "June 30 and December 31" and inserting "January 31 and July 31";

(B) by striking "period." at the end of the first sentence and inserting "periods ending December 31 (of the preceding year) and June 30, respectively."; and

(C) by inserting "of receipt of such reports" after "thirty days";

(4) in subsection (d)(3)(C), by inserting "inspection, or audit," after "investigation,";

(5) in subsection (d)(4), by inserting "or findings and recommendations" after "report"; and

(6) in subsection (e)(6)—

(A) by striking "it is the sense of Congress that"; and

(B) by striking "should" and inserting "shall".

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 appropriate 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) AMENDMENTS OF THE NATIONAL SECURITY ACT OF 1947.—(1) Section 3(4)(E) of the National Security Act of 1947 (50 U.S.C. 401a(4)(E)) is amended by striking out "the central imagery authority within the Department of Defense" and inserting in lieu thereof "the Central Imagery Office".

(2) Section 105(b)(2) of such Act (50 U.S.C. 403–5(b)(2)) is amended by striking out "a central imagery authority" and inserting in lieu thereof "the Central Imagery Office".

(3) Section 106(b) of such Act (50 U.S.C. 403–6(b)) is amended—

(A) in the subsection caption, by striking out "CENTRAL IMAGERY AUTHORITY" and inserting in lieu thereof "CENTRAL IMAGERY OFFICE"; and

(B) by striking out "central imagery authority" and inserting in lieu thereof "Central Imagery Office".

(b) TITLE 10, UNITED STATES CODE.—(1) Chapter 83 of title 10, United States Code, is amended as follows:

(A) By amending the heading of the chapter to read as follows:

"CHAPTER 83—DEFENSE INTELLIGENCE AGENCY AND CENTRAL IMAGERY OFFICE CIVILIAN PERSONNEL".

(B) In section 1601—

(i) by inserting "and the Central Imagery Office" after "Defense Intelligence Agency" in subsection (a);

(ii) by inserting "or the Central Imagery Office" after "outside the Defense Intelligence Agency" and inserting ", the Central Imagery Office," after "to the Defense Intelligence Agency" in subsection (d); and

(iii) by inserting "and the Central Imagery Office" after "Defense Intelligence Agency" in subsection (e).

(C) In section 1602, by inserting "and Central Imagery Office" after "Defense Intelligence Agency".

(D) In section 1604—

(i) by inserting "and the Central Imagery Office," after "Defense Intelligence Agency" in subsection (a)(1);

(ii) by inserting "or the Central Imagery Office" after "Defense Intelligence Agency" in both places it occurs in the second sentence of subsection (b);

(iii) by inserting "or the Central Imagery Office" after "Defense Intelligence Agency" in subsection (c);

(iv) by inserting "and the Central Imagery Office" after "Defense Intelligence Agency" in subsection (d);

(v) by inserting "or the Central Imagery Office" after "Defense Intelligence Agency" in subsection (e)(1); and

(vi) in subsection (e)(3)—

(I) by amending the first sentence to read as follows: "The Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense, the Director of the Defense Intelligence Agency, the Director of the Central Imagery Office, or all three."; and

(II) by striking "either" and inserting "any".

(2) The items relating to chapter 83 in the tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of title 10, United States Code, are amended to read as follows:

"83. Defense Intelligence Agency and Central Imagery Office Civilian Personnel ..... 1601".

(c) CHAPTER 23 OF TITLE 5.—Section 2302(a)(2)(C)(ii) of title 5, United States Code, is amended by inserting "the Central Imagery Office," after "Defense Intelligence Agency,".

(d) CHAPTER 31 OF TITLE 5.—Section 3132(a)(1)(B) of title 5, United States Code, is amended by inserting "the Central Imagery Office," after "Defense Intelligence Agency,".

(e) CHAPTER 43 OF TITLE 5.—Section 4301(1)(B)(ii) of title 5, United States Code, is amended by inserting "the Central Imagery Office," after "Defense Intelligence Agency,".

(f) CHAPTER 47 OF TITLE 5.—Section 4701(a)(1)(B) of title 5, United States Code, is amended by inserting "the Central Imagery Office," after "Defense Intelligence Agency,".

(g) CHAPTER 51 OF TITLE 5.—Section 5102(a)(1) of title 5, United States Code, is amended—

(1) by striking "or" at the end of clause (ix);

(2) by striking the period at the end of clause (x) and inserting "; or"; and

(3) by adding at the end the following:

"(xi) the Central Imagery Office, Department of Defense.".

(h) CHAPTER 51 OF TITLE 5.—Section 5342(a)(1) of title 5, United States Code, is amended—

(1) by striking "or" at the end of subparagraph (J);

(2) by inserting "or" after the semicolon at the end of subparagraph (K); and

(3) by adding at the end the following:

"(L) the Central Imagery Office, Department of Defense;".

(i) ADDITIONAL LEAVE TRANSFER PROGRAMS.—(1) Section 6339(a)(1) of title 5, United States Code, is amended—

(A) by striking "and" at the end of subparagraph (D);

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by inserting after subparagraph (D) the following new subparagraph (E):

"(E) the Central Imagery Office; and".

(2) Section 6339(a)(2) of such title is amended—

(A) by striking "and" at the end of subparagraph (D);

(B) by redesignating subparagraph (E) as subparagraph (F);

(C) by inserting after subparagraph (D) the following new subparagraph (E):

"(E) with respect to the Central Imagery Office, the Director of the Central Imagery Office; and"; and

(D) in subparagraph (F), as redesignated by subparagraph (B) of this paragraph, by striking "paragraph (1)(E)" and inserting "paragraph (1)(F)" both places it appears.

(j) CHAPTER 71 OF TITLE 5.—Section 7103(a)(3) of title 5, United States Code, is amended—

(1) by striking "or" at the end of subparagraph (F);

(2) by inserting "or" at the end of subparagraph (G); and

(3) by adding at the end the following:

"(H) the Central Imagery Office;".

(k) CHAPTER 73 OF TITLE 5.—Section 7323(b)(2)(B)(i) of title 5, United States Code, is amended—

(1) by striking "or" at the end of subclause (XI); and

(2) by adding at the end the following:

"(XIII) the Central Imagery Office; or".

(l) CHAPTER 75 OF TITLE 5.—Section 7511(b)(8) of title 5, United States Code, is amended by inserting "the Central Imagery Office," after "Defense Intelligence Agency,".

(m) ETHICS IN GOVERNMENT ACT OF 1978.—Section 105(a)(1) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by inserting "the Central Imagery Office," after "Defense Intelligence Agency,".

(n) EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988.—Section 7(b)(2)(A)(i) of the Employee Polygraph Protection Act of 1988 (29 U.S.C. 2006(b)(2)(A)(i)) is amended by inserting "the Central Imagery Office," after "Defense Intelligence Agency,".

SEC. 502. EXCEPTION TO PUBLIC AVAILABILITY OF CERTAIN DEPARTMENT OF DEFENSE MAPS, CHARTS, AND GEODETIC DATA.

Section 2796(b)(1) of title 10, United States Code is amended by inserting "jeopardize or interfere with ongoing military or intelligence operations or" in subparagraph (C) after "disclosed,".

SEC. 503. 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.

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 review 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. 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 estimated 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 deter-

mination 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. 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. 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 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 fiscal 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. SHORT TITLE.

This title may be cited as the "Counterintelligence and Security Enhancements Act of 1994".

SEC. 802. ACCESS TO CLASSIFIED INFORMATION.

(a) AMENDMENT OF THE NATIONAL SECURITY ACT OF 1947.—The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end the following new title:

"TITLE VIII—ACCESS TO CLASSIFIED INFORMATION

"PROCEDURES

"SEC. 801. (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 reinvestigations for all employees in the executive branch of Government 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, and travel records, 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 Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"REQUESTS BY AUTHORIZED INVESTIGATIVE AGENCIES

"SEC. 802. (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 condition 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. 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. 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); and

"(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.".

(b) CLERICAL AMENDMENT.—The table of contents of the National Security Act of 1947 is amended by adding at the end the following:

"TITLE VIII—ACCESS TO CLASSIFIED INFORMATION

"Sec. 801. Procedures.
"Sec. 802. Requests by authorized investigative agencies.
"Sec. 803. Exceptions.
"Sec. 804. Definitions.".

(c) 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) REWARDS.—Section 3071 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "With respect to"; and

(2) by adding at the end the following new subsection:

"(b) With respect to acts of espionage involving or directed at the United States, the Attorney General may reward any individual who furnishes information—

"(1) leading to the arrest or conviction, in any country, of any individual or individuals for commission of an act of espionage against the United States;

"(2) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of espionage against the United States; or

"(3) leading to the prevention or frustration of an act of espionage against the United States.".

(b) DEFINITIONS.—Section 3077 of such title is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) 'act of espionage' means an activity that is a violation of—

"(A) section 793, 794, or 798 of title 18, United States Code; or

"(B) section 4 of the Subversive Activities Control Act of 1950.".

(c) CLERICAL AMENDMENTS.—(1) The item relating to chapter 204 in the table of chapters for part II of such title is amended to read as follows:

"204. Rewards for information concerning terrorist acts and espionage ..... 3071".

(2) The heading for chapter 204 of such title is amended to read as follows:

"CHAPTER 204—REWARDS FOR INFORMATION CONCERNING TERRORIST ACTS AND ESPIONAGE".

SEC. 804. CRIMINAL FORFEITURE FOR VIOLATION OF CERTAIN ESPIONAGE LAWS.

(a) IN GENERAL.—Section 798 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(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 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 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, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.".

(b) AMENDMENTS FOR CONSISTENCY IN APPLICATION OF FORFEITURE UNDER TITLE 18.—(1) Section 793(h)(3) of such title is amended in the matter preceding subparagraph (A) by striking out "(o)" each place it appears and inserting in lieu thereof "(p)".

(2) Section 794(d)(3) of such title is amended in the matter preceding subparagraph (A) by striking out "(o)" each place it appears and inserting in lieu thereof "(p)".

(c) SUBVERSIVE ACTIVITIES CONTROL ACT.—Section 4 of the Subversive Activities Control Act of 1950 (50 U.S.C. 783) is amended by adding at the end the following new subsection:

"(e)(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 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 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, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.".

SEC. 805. DENIAL OF ANNUITIES OR RETIRED PAY TO PERSONS CONVICTED OF ESPIONAGE IN FOREIGN COURTS INVOLVING UNITED STATES INFORMATION.

Section 8312 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) For purposes of subsections (b)(1) and (c)(1), an offense within the meaning of such subsections is established if the Attorney General of the United States certifies to the agency administering the annuity or retired pay concerned—

"(A) that an individual subject to this chapter has been convicted by an impartial court of appropriate jurisdiction within a foreign country in circumstances in which the conduct violates the provisions of law enumerated in subsections (b)(1) and (c)(1), or would violate such provisions had such conduct taken place within the United States, and that such conviction is not being appealed or that final action has been taken on such appeal;

"(B) that such conviction was obtained in accordance with procedures that provided the defendant due process rights comparable to such rights provided by the United States Constitution, and such conviction was based upon evidence which would have been admissible in the courts of the United States; and

"(C) that such conviction occurred after the date of enactment of this subsection.

"(2) Any certification made pursuant to this subsection shall be subject to review by the United States Court of Claims based upon the application of the individual concerned, or his or her attorney, alleging that any of the conditions set forth in subparagraphs (A), (B), or (C) of paragraph (1), as certified by the Attorney General, have not been satisfied in his or her particular circumstances. Should the court determine that any of these conditions has not been satisfied in such case, the court shall order any annuity or retirement benefit to which the person concerned is entitled to be restored and shall order that any payments which may have been previously denied or withheld to be paid by the department or agency concerned.".

SEC. 806. POSTEMPLOYMENT ASSISTANCE FOR CERTAIN TERMINATED INTELLIGENCE EMPLOYEES OF THE DEPARTMENT OF DEFENSE.

(a) CONSOLIDATION AND EXTENSION OF AUTHORITY.—

(1) IN GENERAL.—Chapter 81 of title 10, United States Code, is amended by adding at the end the following new section:

"§1599. 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 an intelligence component of the Department of Defense;

"(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 position in an intelligence component of the Department of Defense—

"(1) who has been found to be ineligible for continued access to information designated as 'Sensitive Compartmented Information' and employment with the intelligence component; or

"(2) whose employment with the intelligence component 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 with an intelligence component of the Department of Defense.

"(e) ANNUAL REPORT.—(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (2) an annual report with respect to any expenditure made under this section.

"(2) The committees referred to in paragraph (1) are the following:

"(A) The Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

"(B) The Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate.

"(f) DEFINITION.—In this section, the term 'intelligence component of the Department of Defense' means any of the following:

"(1) The National Security Agency.

"(2) The Defense Intelligence Agency.

"(3) The National Reconnaissance Office.

"(4) The Central Imagery Office.

"(5) The intelligence components of any of the military departments.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1599. Postemployment assistance: certain terminated intelligence employees.".

(b) REPEAL OF PREDECESSOR AUTHORITY.—

(1) DEFENSE INTELLIGENCE AGENCY.—Paragraph (4) of section 1604(e) of title 10, United States Code, is repealed.

(2) NATIONAL SECURITY AGENCY.—Section 17 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is repealed.

SEC. 807. PROVIDING A COURT ORDER PROCESS FOR PHYSICAL SEARCHES UNDERTAKEN FOR FOREIGN INTELLIGENCE PURPOSES.

(a) AMENDMENT OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by redesignating title III as title IV and section 301 as section 401, respectively;

(2) in section 401 (as so redesignated) by inserting "(other than title III)" after "provisions of this Act"; and

(3) by inserting after title II the following new title:

"TITLE III—PHYSICAL SEARCHES WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

"DEFINITIONS

"SEC. 301. 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 24 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 alteration 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. (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 com-

mittees 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. (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 the purpose 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 utilized 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.

"ISSUANCE OF AN ORDER

"SEC. 304. (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) 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.

"(c)(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for forty-five days, whichever is less, except that 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.

"(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 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 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.

"(d)(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 24 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.

"(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 24 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.

"(e) 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. (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 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 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 procedures 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.

"CONGRESSIONAL OVERSIGHT

"SEC. 306. 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. (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. 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 violation 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. 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.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 is amended by striking the items relating to title III and inserting the following:

"TITLE III—PHYSICAL SEARCHES WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

"TITLE IV—EFFECTIVE DATE

(c) 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) IN GENERAL.—Chapter 93 of title 18, United States Code, is amended by adding at the end the following new section:

"§1924. Unauthorized removal and retention of classified documents or material

"(a) Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined not more than $1,000, or imprisoned for not more than one year, or both.

"(b) For purposes of this section, the provision of documents and materials to the Congress shall not constitute an offense under subsection (a).

"(c) In this section, the term 'classified information of the United States' means information originated, owned, or possessed by the United States Government concerning the national defense or foreign relations of the United States that has been determined pursuant to law or Executive order to require protection against unauthorized disclosure in the interests of national security.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

"1924. Unauthorized removal and retention of classified documents or material.".

SEC. 809. 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.—Not later than one year after the date referred to in paragraph (2) of subsection (a), and on the expiration of each year thereafter, the President shall submit to Congress a report updating the information referred to in paragraph (1)(D) of that subsection.

(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) REPORT UNDER DEFENSE PRODUCTION ACT.—Section 721(k)(1)(B) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(k)(1)(B)) is amended by inserting "or directly assisted" after "directed".

(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. 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 (3), 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 department 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 (3), 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 to the department or agency concerned, and that such departments or agencies are consulted with respect to espionage investigations undertaken by the Federal Bureau of Investigation which involve the personnel, operations, or information of such department or agency after a report has been provided pursuant to paragraph (1)(A).

(3) 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) or (2), 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.

(4) The Director of the Federal Bureau of Investigation shall, in consultation with the Director of Central Intelligence and the Secretary of Defense, report annually, beginning on February 1, 1995, and continuing each year thereafter, to the Select Committee on In-

telligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives and, in accordance with applicable security procedures, the Committees on the Judiciary of the House of Representatives and the Senate with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

(5) 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.

(6) 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. 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. 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. 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. 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. 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. 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 classification of positions and General Schedule pay rates, except that the rate of pay fixed under this paragraph for the staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title and the rate of pay for other personnel may not exceed the maximum rate payable for grade GS–15 of the General Schedule.

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

And the Senate agree to the same.

From the Permanent Select Committee on Intelligence, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

DAN GLICKMAN,
BILL RICHARDSON,
NORMAN D. DICKS,
JULIAN C. DIXON,
ROBERT TORRICELLI,
RONALD COLEMAN,
DAVID E. SKAGGS,
JAMES H. BILBRAY,
NANCY PELOSI,
GREG LAUGHLIN,
BUD CRAMER,
JACK REED,
LARRY COMBEST,
DOUG BEREUTER,
ROBERT K. DORNAN,
BILL YOUNG,
GEORGE W. GEKAS,
JAMES V. HANSEN,
JERRY LEWIS,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of sections 601 and 704 of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
JOE KENNEDY,
LARRY LAROCCO,
AL MCCANDLESS,
MICHAEL N. CASTLE,

As additional conferees from the Committee on Government Operations, for consideration of section 601 of the House bill, and modifications committed to conference:

JOHN CONYERS, Jr.,
EDOLPHUS TOWNS,
BILL CLINGER,

As additional conferees from the Committee on the Judiciary, for consideration of sections 802–804 of the House bill and sections 601, 703–707, and 709–712 of the Senate amendment, and modifications committed to conference:

HENRY HYDE,

Managers on the Part of the House.

DENNIS DECONCINI,
JOHN GLENN,
BOB KERREY,
RICHARD H. BRYAN,
BOB GRAHAM,
JOHN F. KERRY,
MAX BAUCUS,
J. BENNETT JOHNSTON,
JOHN WARNER,
ALFONSE D'AMATO,
JOHN C. DANFORTH,
JOHN H. CHAFEE,
TED STEVENS,
RICHARD G. LUGAR,
MALCOLM WALLOP,

From the Committee on Armed Services:

SAM NUNN,
STROM THURMOND,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4299), 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, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

TITLE I—INTELLIGENCE ACTIVITIES

Due to the classified nature of intelligence and intelligence-related activities, a classified annex to this joint explanatory statement serves as a guide to the classified Schedule of Authorizations by providing a detailed description of program and budget authority contained therein as reported by the Committee of Conference.

The actions of the conferees on all matters at difference between the two Houses are shown below or in the classified annex to this joint statement.

A special conference group resolved differences between the House and Senate regarding DoD intelligence related activities, referred to as Tactical Intelligence and Related Activities (TIARA). This special conference group was necessitated by the differing committee jurisdictions of the intelligence committees of the House and the Senate, and consisted of members of the House and Senate Committees on Armed Services and the House Permanent Select Committee on Intelligence.

The amounts listed for TIARA programs represent the funding levels jointly agreed to by the TIARA conferees and the House and Senate conferees for the National Defense Authorization Act for Fiscal Year 1995. In addition, the TIARA conferees have agreed on the authorization level, as listed in the classified Schedule of Authorizations, the joint statement, and its classified annex, for TIARA programs which fall into the appropriations category of Military Pay.

SECTIONS 101 AND 102

Sections 101 and 102 of the conference report authorize appropriations for the intelligence and intelligence-related activities of the United States Government for fiscal year 1995 and establish personnel ceilings applicable to such activities.

SECTION 103

Section 103 of the conference report authorizes appropriations and personnel end-strengths for fiscal year 1995 for the Community Management Account. The Community Management Account consists of the Community Management Staff, the Center for Security Evaluation, the National Intelligence Council, the Advanced Research and Development Committee, the National Counterintelligence Center, the Foreign Language Committee, and the Environmental Task Force. The conference report authorizes $86,900,000 and 241 personnel for the Community Management Account, to be used in connection with the performance of some of the tasks associated with the responsibilities the Director of Central Intelligence (DCI) has for the management of the intelligence community. As part of the Office of the Director of Central Intelligence, the Community Management Account is administered in a manner consistent with the provisions of the National Security Act of 1947 and the Central Intelligence Agency Act of 1949.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SECTION 201

Section 201 of the conference report authorizes appropriations for fiscal year 1995 of $198,000,000 for the Central Intelligence Agency Retirement and Disability Fund, the amount contained in both the House bill and the Senate amendment.

TITLE III—GENERAL PROVISIONS

SECTION 301

Section 301 of the conference report provides that appropriations authorized by the conference report 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 compensation or benefits authorized by law. A provision identical to section 301 was contained in the House bill and a similar provision was contained in the Senate amendment.

SECTION 302

Section 302 of the conference report provides that the authorization of appropriations by the conference report shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States. Section 302 is identical to section 302 of the House bill and similar to section 302 of the Senate amendment.

SECTION 303

Section 303 of the conference report expresses the sense of Congress that the Director of Central Intelligence should continue to direct that elements of the intelligence community should award contracts in a manner that would maximize the procurement of products produced in the United States, when such action is compatible with the national security interests of the United States, consistent with operational and security concerns, and fiscally sound. A provision similar to section 303 has been contained in previous intelligence authorization acts. Section 303 is similar in intent to section 303 of the House bill. The Senate amendment did not contain a similar provision.

SECTION 304

Section 304 of the conference report repeals section 107 of the Intelligence Authorization Act for Fiscal Year 1987 (Public Law 99–569), which limited U.S. intelligence cooperation with the government of South Africa. Section 304 is identical to section 303 of the Senate amendment. The House bill did not contain a similar provision.

The limitation contained in Public Law 99–569 reflected a concern that the intelligence services of South Africa were playing an important role in the government's efforts to maintain the system of apartheid in the face of the activities of internal opposition forces.

Apartheid is no more. The people of South Africa have freely elected a new government and inaugurated a new president. Virtually all of the restrictions imposed upon South Africa by the Comprehensive Anti-Apartheid Act of 1986 have been lifted. Attention is now being focused on fostering the development of democratic institutions and processes. The establishment of internal management and administrative systems to improve accountability in, and oversight of, the intelligence and security services should be a part of these activities. The conferees are convinced the United States intelligence agencies can play a helpful role in this effort, as well as in other undertakings with the South African government, and therefore believe that the current limitation on cooperation should be removed.

SECTION 305

Section 305 of the conference report requires the Director of Central Intelligence to submit a report to the congressional intelligence committees, armed services committees, and defense appropriations subcommittees no later than December 1, 1994 on the advisability of providing for mandatory retirement for expiration of time in class in a manner comparable to the applicable provisions of section 607 of the Foreign Service Act of 1980 (22 U.S.C. 4007) for all civilian employees of the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Reconnaissance Office, the Central Imagery Office, and the intelligence elements of the Army, Navy, Air Force and Marine Corps. The report shall contain an assessment of the feasibility of instituting a mandatory retirement policy and alternative means of

achieving the objectives of such a policy, as well as an assessment by the Secretary of Defense of the impact of a mandatory retirement policy for civilian employees of the intelligence community on all other Department of Defense civilian employees. The report shall also include appropriate legislative recommendations.

Section 305 is similar to section 304 of the Senate amendment. The House bill did not contain a similar provision.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SECTION 401

Section 401 of the conference report deletes the provisions in section 4(a) of the Central Intelligence Agency Act of 1949 which provide that medical treatment for illness or injury overseas, or the cost of transporting employees to a suitable hospital or clinic for such treatment, is not compensable by the Director of Central Intelligence if the condition resulted from "vicious habits, intemperance, or misconduct." The conferees note that deletion of this language will not mandate compensation for such illness or injuries but would permit the Director to pay expenses if appropriate under regulations issued pursuant to the statute. The conferees believe that deletion of the existing language will eliminate the possibility that the CIA's alcohol rehabilitation program could be seen as inconsistent with the Agency's statutory authorities.

Section 401 also corrects a statutory citation to section 10 of the Act of March 3, 1933, with a reference to section 5731 of title 5, United States Code and strike gender-specific language.

Section 401 is identical to section 401 of the House bill and similar to section 401 of the Senate amendment.

SECTION 402

Section 402 reflects the conferees' resolution of the issues pertaining to the provisions of title VI of the House bill. Title VI of the House bill would have established in statute the offices of the inspector general at the National Security Agency (NSA) and the Defense Intelligence Agency (DIA) and would have made conforming amendments to the CIA Inspector General Act, section 17 of the Central Intelligence Agency Act of 1949.

Because of concerns expressed by the Department of Defense, the conferees chose not to include subsections (a) or (b) of section 601 of the House bill, concerning the inspectors general of DIA and NSA, in the conference report at this time.

Section 402 is substantially similar to section 601(c) of the House bill except that the conferees agreed to eliminate the requirement that the Inspector General of the Central Intelligence Agency have experience in a federal office of inspector general. Although such experience is highly desirable, the conferees felt the requirement would have greatly narrowed the pool of potential inspector general appointees.

The Senate amendment contained no similar provision.

SECTION 403

Section 403 of the Senate amendment authorized the Secretary of Defense to expend $3 million to establish a National Public In-

formation Center for the purpose of using unclassified information available in government data bases to produce multimedia presentations to be used by other government decision makers and the general public. The House bill contained no similar provision.

The conferees believe it would be worthwhile for the government to develop more innovative presentations of its unclassified data bases. The conferees further agree that policy makers and the American public should derive greater benefit from the government's information holdings. However, the conferees do not believe that the creation of an information center is necessary to address these deficiencies. They agree that it would be more appropriate to conduct a one-year project to produce a limited number of multimedia presentations from a broad range of unclassified government data, possibly augmented by commercial or private unclassified data. These presentations, which should treat topics of broad policy and general interest, would then be reviewed by the congressional intelligence committees to determine whether the project should be continued beyond fiscal year 1995. In addition, the conferees believe that the CIA's Office of the Open Source Coordinator is best equipped to conduct such an effort. The conferees expect that in executing this project, the intelligence community will become familiar with the latest commercial multimedia and graphical data interface techniques, and that the quality of intelligence presentations to policymakers will thereby improve. The conferees further fully expect all products to be marked with copyright notices as appropriate and the intellectual property rights associated with the information and techniques utilized in this project will be respected in the preparation and subsequent use of the products.

Section 403 thus authorizes the Director of Central Intelligence to expend not more than $3 million from funds otherwise available under this Act to conduct an Advanced Information Presentation Project for the purpose of: (1) demonstrating the potential benefit to government decision makers and the general public from the presentation of unclassified U.S. government information in a multimedia format, and (2) enabling the intelligence community to develop or acquire state-of-the-art multimedia and graphical interface techniques to improve multimedia intelligence presentations.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

SECTION 501

Section 501 of the conference report addresses issues pertaining to the Central Imagery Office (CIO) which were addressed by section 501 of the House bill and section 501 of the Senate amendment.

Subsection (a) amends the National Security Act of 1947 to delete the general references in current law to "a central imagery authority" and replace them with the name of the CIO. This provision is similar to section 501(a) of the Senate amendment. The House bill did not contain a similar provision.

Subsection (b) amends several provisions of titles 5 and 10, United States Code, as well as other statutes applicable to government personnel, to provide the Secretary of Defense with the same statutory authorities to manage the civilian employees of the CIO

as exist for the civilian employees of the Defense Intelligence Agency (DIA). This provision is identical to Section 501 of the House bill and is similar in intent to section 501(b) of the Senate amendment.

The conferees note that the DIA currently provides personnel administrative support for the civilian employees of the CIO. Section 501 is intended to provide the CIO the same personnel authorities as the DIA. It is not intended to require that the CIO secure administrative support only from the DIA. The conferees expect that the CIO, rather than creating an internal mechanism for providing administrative support, will obtain such support from any component of the Department of Defense determined to be capable of providing it.

SECTION 502

Section 502 of the conference report amends section 2796 of title 10, United States Code, to authorize the Director of the Defense Mapping Agency to withhold from public disclosure maps, charts, and geodetic data prepared specifically to support ongoing military or intelligence operations, where such products are not themselves classified. The conferees view section 502 as a reasonable extension of the Director's authority under curent law to withhold from public disclosure products which would reveal military opeational or contingency plans.

Section 502 is substantially the same, except for technical drafting differences, as section 502 of the Senate amendment. The House bill did not contain a similar provision.

SECTION 503

Section 503 of the conference report clarifies that the Privacy Act of 1974 (5 U.S.C. 552a(e)(3)) does not apply to Department of Defense personnel authorized to collect intelligence from human sources who are conducting, outside the United States, an initial assessment contact of a United States person as a potential source of foreign intelligence.

The conferees agree the Privacy Act notice requirements as now implemented may pose a serious risk to the safety overseas of both the intelligence officer and the U.S. person being assessed.

The conferees believe these risks can be largely eliminated if DoD intelligence officers authorized to collect intelligence from human sources operating outside of the U.S. are allowed one initial assessment contact with a potential U.S. person source without being required to give notice of governmental affiliation. The conferees intend that this provision be construed in such a way as to minimize intrusion on the privacy of the potential U.S. person. The conferees intend that the initial assessment contact be no more than one face-to-face meeting or its equivalent. Telephone conversations which involve the solicitation of personal information beyond the minimum needed to set up an appointment to meet are considered by the conferees to be an initial assessment contact. The conferees also believe that no personal information solicited from the individual during the initial assessment contact should be retained in a U.S. government system of records if the individual is not informed of the intelligence officer's governmental affiliation. The conferees also expect that under no circumstances should a po-

tential U.S. person be requested or utilized in any fashion to undertake any intelligence activity by defense intelligence officers unless the potential U.S. person is made willing that he or she is acting on behalf of the U.S. government regardless of the status of the initial assessment contact.

The conferees expect that the appropriate committees of the Congress will conduct vigorous oversight of the use of this authority and thus agreed to require that the Department of Defense maintain records concerning initial assessment contacts outside the United States during which notice of governmental affiliation was not given to a potential source who is a United States person.

The records should 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.

Section 503 is similar to section 502 of the House bill. The Senate amendment did not include a similar provision.

SECTION 504

Section 504 of the conference report clarifies that section 1006 of the National Defense Authorization Act for Fiscal Year 1995 shall not apply to amounts which remain available on the date of enactment of the Intelligence Authorization Act for Fiscal Year 1995 for national foreign intelligence programs, projects, and activities. The conferees note that the aggregation of programs known as Tactical Intelligence and Related Activities (TIARA) are not covered by section 504 because of a difference in jurisdiction between the House Intelligence Committee, which shares jurisdiction over TIARA programs with the House Armed Services Committee, and the Senate Intelligence Committee which does not claim jurisdiction over TIARA. The absence of a refernce to TIARA in section 504 is not intended to reflect on the jurisdiction of the House Intelligence Committee over intelligence elements of this aggregation of programs.

Section 504 was not a part of either the House bill or the Senate amendment.

TITLE VI—CONSTRUCTION OF FACILITIES FOR THE INTELLIGENCE COMMUNITY

SECTION 601

Section 601 places certain limitations upon the funding authorized by the bill for fiscal year 1995 for the National Reconnaissance Office.

Subsection (a) provides that $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 review have been made available to the intelligence committees. Subsection (a) also provides that no funds authorized by the bill 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 such purchases or contracts are entered into in accordance with Department of Defense policies and procedures, or unless the President determines that these policies and procedures shall not apply. In this event, the President is required by subsection (b) to advise the intelligence committees in writing within 30 days of such waiver.

Subsection (c) provides that no funds available to the National Reconnaissance Office may be obligated or expended for the construction of the Headquarters Building if such obligation or expenditure would cause the total cost of the building to exceed $310 million, unless the authority for such obligation or expenditure has been provided in an act authorizing appropriations, an appropriations act, or in accordance with applicable reprogramming procedures.

Section 601 is similar to section 504 of the Senate amendment. The House bill did not contain a similar provision.

SECTION 602

Section 602 of the conference report establishes procedures for congressional notification and approval of certain intelligence community construction and improvement projects.

Section 602(a) specifies that 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 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. The conferees understand the term "estimated Federal cost" to include design construction, and fit-up costs.

Section 602(a) also specifies that, 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 having an estimated Federal cost greater than $500,000 but less than $750,000 the congressional intelligence committees shall be notified by the Director of Central Intelligence. A similar notification shall be made in the case of any improvement project for any facility to be used primarily by personnel of any component of the intelligence community which has an estimated Federal cost greater than $500,000. It is the intent of the conferees that notification occur for projects which are projected to cost more than $500,000 at their inception, not when a series of improvement projects at the same facility exceed $500,000.

An exception to the notification and approval requirements for construction projects exceeding $750,000 is provided in section 602(b) for cases in which the Secretary of Defense and the Director of Central Intelligence jointly determine that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and the requirement for the project is so urgent that it cannot be deferred until the next intelligence authorization act. For construction projects primarily for the Central Intelligence Agency, the determination that the grounds for an exception exist shall be made solely by the Director of Central Intelligence. When a determination is made that ground for an excep-

tion exist, a report indicating the justification for the project, justification for the exception and the source of funds to be used for the project must be submitted to the appropriate committees of the Congress. No work on the project may begin until twenty-one days after the report is received by the committees.

Section 602(c) specifies that section 602 does not apply to any project covered by section 601(a)(1)(A) or section 601(c) of the conference report.

The provisions of section 602 did not appear in either the House bill or the Senate amendment.

SECTION 603

Section 603 of the conference report was included to reflect the conferees' dissatisfaction with the lack of specificity in the budget category referred to as "base." Section 603 requires that those congressional justification materials submitted annually in support of the National Foreign Intelligence Program budget request shall include the same level of budgetary detail for the "base" category as is provided for the categories of "ongoing initiatives" and "new initiatives." Additional legislation will be pursued as necessary to achieve the goal of complete transparency in the "base" budget, which the conferees believe will allow for more effective internal as well as congressional oversight.

The provisions of section 603 were not included in either the House bill or the Senate amendment.

SECTION 604

Section 604 of the conference report provides definitions for certain terms used in title VI.

TITLE VII—CLASSIFICATION MANAGEMENT

SECTION 701

Section 701 of the conference report reflects the conferees' resolution of the issues contained in section 702 of the House bill. The Senate amendment did not contain a similar provision.

As agreed to by the conferees, section 701 requires the President to issue an executive order, providing for the classification and declassification of information not later than 90 days after the date of enactment of this Act. The effective date of the executive order is to be 30 days after it is submitted to the congressional intelligence committees and the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate. Section 701 also expresses the sense of Congress that the executive order should provide for the following:

(1) that information should be classified only when its public disclosure would cause identifiable damage to the national security. The conferees believe that government employees authorized to classify information should be able to articulate how disclosure of such information would damage the national security rather than citing vague references to the "national security" as justification for classification;

(2) that classified information should be declassified if the appropriate authority within the executive branch determines that the government's interest in continuing to protect the classified information in question is outweighed by the public's interest in having the information available; and

(3) that classified information which is more than 25 years old should be automatically declassified unless it falls within a category designated by the President for document-by-document review to identify information whose disclosure would clearly damage the national security. The conferees believe that most classified information should have lost its national security sensitivity with the passage of 25 years, but recognize there may be certain categories, e.g. the identification of intelligence sources or methods, that may require continued classification. Executive agencies should not continue the classification of such information, however, unless it is clear, given the nature of the information concerned, even after 25 years, that the national security would be damaged by its disclosure.

In including section 701 in the conference report, the conferees intend to underscore their concern that the current executive order on national security information, Executive Order 12356, is now more than twelve years old, was promulgated during the Cold War, and should be updated.

SECTION 702

Section 702 of the conference report requires each agency funded in the National Foreign Intelligence Program and receiving an appropriation for fiscal year 1995 of more than $1 million in the security, countermeasures, and related activities structural budget category to allocate at least two percent of its total expenditure in this category to the classification management consolidated expenditure center. The funds so allocated are to be used to: (1) develop a phased plan to implement declassification guidelines contained in the executive order which replaces Executive Order 12356 on national security information; (2) commence the process of declassification and reduction of the amount of archival classified documents maintained by each agency; and (3) submit a report to the congressional intelligence committees without 90 days after the end of fiscal year 1995 on the progress made in carrying out the process of declassification with reference to the phased plan. The contents of the phased plan are further specified in House Report 103–541, Part I, which accomplishes the House bill.

Section 702 is identical to section 701 of the House bill. The Senate amendment did not contain a similar provision.

TITLE VIII—COUNTERINTELLIGENCE AND SECURITY

SECTION 801

Section 801 contains the short title of title VIII, the Counterintelligence and Security Enhancements Act of 1994.

SECTION 802

Section 802 amends the National Security Act of 1947 by adding a new title VIII on access to classified information. It is similar

to section 802 of the Senate amendment and section 801 of the House bill.

Section 801(a) of the new title VIII requires the President to issue, within 180 days of enactment, regulations to establish uniform procedures governing access to classified information by employees in the executive branch of the government. Like Section 702 of the Senate amendment, Section 801(a) provides that the regulations to be issued by the President shall at a minimum provide for certain things. Subsection (a)(1) specifies that, unless otherwise permitted by the President, no employee of the executive branch may be given access to classified information unless such employee has been the subject of an appropriate background investigation and such access is determined to be clearly consistent with the national security. Subsection (a)(2) provides that uniform requirements for background investigations will be established for all employees of the executive branch. Subsection (a)(3) specifies that as a condition for receiving access to classified information, executive branch employees will be required to provide written consent permitting an authorized investigative agency to obtain certain financial records and travel records during the period of the employees' access and for three years thereafter, in accordance with conditions and limitations set forth elsewhere in the Act. The conferees note that the time period was reduced from the five years contained in the Senate amendment. Subsection (a)(4) provides that employees who require access to particularly sensitive information, as determined by the President, shall be required to submit reports concerning their financial condition and travel, as may be determined by the President. Finally, subsection (a)(5) provides that uniform standards shall be established to ensure that employees whose access to classified information is being denied or terminated are appropriately advised of the reasons for such denial or termination and given an adequate opportunity to respond to the information which forms the basis for the denial or termination.

The conferees wish to make clear with respect to subsection (a)(5) that the words "appropriately advised" refer to both the manner and content of the notice. The conferees intend that employees whose access to classified information is being denied or terminated will be officially advised of the reasons for such denial or termination to the maximum extent consistent with the national security. The conferees recognize there will be rare occasions when information which forms the basis for a proposed denial or termination of access to classified information was itself derived from classified sources or by a classified method which cannot be divulged to the employee concerned. However, even in these circumstances, the department or agency concerned should make every reasonable effort to convey to the employee concerned the basis for the denial or termination of access short of disclosing classified information which reveals a sensitive source or method.

The primary purpose of this requirement is to provide a procedure that will help ensure that departments and agencies do not make security determinations on the basis of inaccurate or unreliable information. It is not uncommon for background investigations to develop information which does not relate to the subject of the investigation or is otherwise inaccurate. Reliance upon such infor-

mation by the department or agency concerned could easily have an adverse impact on the career and livelihood of the employee concerned. The conferees believe the minimal procedure required by subsection (a)(5) will go far towards preventing such results. In requiring this procedure, it is not the intent of the conferees that subsection (a)(5) affect in any way existing case law on the subject of security clearances (e.g. *Department of Navy* v. *Egan*, 484 U.S. 518 (1988)), nor is subsection (a)(5) intended to alter or affect in any way the recourse employees may have, through administrative or judicial means, to seek redress for an adverse determination made by a department or agency with regard to their security clearance.

The conferees also agreed to the addition of section 801(b) which had been in neither the Senate amendment not the House bill. This section provides that nothing in section 801(a) shall be deemed to limit the responsibility or 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. Specifically, by requiring the President to promulgate uniform standards to ensure due process where access to classified information is being denied or terminated, it is not the intent of the conferees to limit or affect the authority of department or agency heads, pursuant to statute or executive order, to terminate access to classified information or to terminate employment in the interests of national security, nor to affect the procedures intended to provide due process in such situations which may be provided pursuant to such statutes or executive orders.

Subsection (b)(2) was added by the conferees to require a report to the congressional intelligence committees when a department or agency head exercises the authority provided by other statutes or executive order, and referred to in subsection (b)(1), to terminate access to classified information if the national security so requires.

Section 802 is similar to section 802 of the Senate amendment and to section 804 (of the new title VIII) proposed in the House bill. The conferees agreed to the following modifications of the Senate language:

(1) Section 802(a)(2)(A) of the new title VIII was modified to reflect the reduced time period for which the employee was required to provide access to the records covered by the Act, i.e. from five years in the Senate bill to three years:

(2) Subsection (a)(2)(B), which sets forth the circumstances which must be present in order for a request for access to records to be made under the Act, was modified in several respects. Paragraph (i) was modified to provide that there must be "reasonable grounds to believe, based on credible information," that the employee concerned is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power. The Senate amendment had required only "information or allegations" of such conduct. Paragraph (ii) was modified to provide that the employing agency must have information which it "deems credible" of unexplained affluence or excessive indebtedness before it could seek access to records. The Senate amendment had required only that the employing agency have "information" of such

affluence or indebtedness. The conferees believe these modifications provide more appropriate standards for obtaining access to records under this section.

(3) In section 804(4) of the new title VIII, the definition of the term "employee" was modified by inserting at the end of the definition, "except as otherwise determined by the President." The conferees agreed to this modification to permit the President latitude to exclude certain categories from the term "employee" where compliance with the requirements of the statute is either not feasible or not considered to be necessary.

Section 802(f) of the new title VIII states "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.)." The conferees intend that nothing in this section should be construed to limit the authority of federal agencies which conduct background investigations of federal employees from continuing to conduct credit and financial checks under the Right to Financial Privacy Act or the Fair Credit Reporting Act as a routine part of assessing a person's financial responsibility for access to classified information or employment in a sensitive position.

SECTION 803

Section 803 of the conference report amends section 3071 of title 18, United States Code, to authorize the Attorney General to give rewards for information leading to the arrest or conviction of individuals for the commission of espionage, or conspiracy to commit espionage, or leading to the prevention or frustration of an act of espionage against the United States. The conferees believe that the discretionary authority conferred upon the Attorney General by section 803 should not be used to reward individuals who have a pre-existing duty to report suspected breaches of security or who are otherwise remunerated by the U.S. Government for counterintelligence information.

Section 803 is identical to section 802 of the House bill and substantially the same, except for technical drafting differences, to section 705 of the Senate amendment.

SECTION 804

Section 804 of the conference report amends 18 U.S.C. 798 and 50 U.S.C. 783 to provide for the forfeiture of the proceeds of espionage activities to the United States and the deposit of the amounts forfeited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601).

Section 804 is substantially similar, except for technical drafting differences, to section 707 of the Senate amendment and section 804 of the House bill.

SECTION 805

Section 805 of the conference report provides for the denial of annuities or retired pay to individuals convicted in an impartial foreign court of appropriate jurisdiction of conduct which would

constitute a violation of U.S. espionage statutes, upon the Attorney General's certification that the individual was afforded due process and the evidence would have been admissible in a U.S. court. The Attorney General's certification would be subject to review by the United States Court of Claims.

Section 805 is identical to section 805 of the House bill and, except for the right of appeal to the Court of Claims, to section 708 of the Senate amendment.

SECTION 806

Section 806 authorizes the Secretary of Defense to provide post employment assistance to former civilian employees of intelligence components of the Department who are found to be ineligible for continued access to Sensitive Compartmented Information. Assistance may be provided for up to five years after the individual's employment is terminated, if the Secretary determines that the assistance is essential to maintain the judgment and stability of the former employee and avoid unlawful disclosure of classified information to which the former employee had access. The conferees anticipated that the Secretary of Defense may delegate the authority to provide assistance to the heads of the intelligence components as the Secretary deems appropriate. The Secretary shall submit an annual report with respect to any expenditure under this section to the appropriations, defense and intelligence committees of the Congress.

Section 806 of the conference report is similar to section 806 of the House bill. The conferees wish to clarify, however, that any post-employment assistance provided pursuant to authority contained in the conference report be limited to employees of intelligence components of the Department. A technical drafting change to section 806 of the House bill was made to accomplish that purpose. The Senate amendment contained no provision on this matter.

SECTION 807

Section 807 amends the Foreign Intelligence Surveillance Act of 1978 (FISA) (50 U.S.C. 1801 et seq.) by adding a new title III which provides in general for a court order procedure to govern the conduct of physical searches undertaken within the United States for foreign intelligence purposes. The procedure is similar to that used to authorize electronic surveillance for foreign intelligence purposes within the United States.

Section 807 is similar to section 709 of the Senate amendment. The House bill had no similar provision. (For a detailed discussion of the background of this legislation as well as a detailed section-by-section analysis of the provisions of the Senate amendment, see Senate Report 103–296, accompanying S. 2056, The Counterintelligence and Security Enhancements Act of 1994.)

Due to the complexity of section 807, the discussion below, which includes an explanation of the modifications to the Senate amendment made by the conferees, is organized using the section numbers of the new title III of FISA as found both in the Senate amendment and in the conference report.

Section 301

Section 301 contains the definitions of terms used in the new title III. This section is identical to section 309 of the Senate amendment with the exception of two modifications agreed to by the conferees.

The first modification is the addition of subsection (4)(D), which was not in the Senate amendment. The addition of this subsection is necessitated by the inclusion of section 302, discussed below, which also was not in the Senate amendment. Subsection (4)(D) provides minimization procedures to govern physical searches undertaken of certain "foreign powers" pursuant to the approval of the Attorney General under section 302. (See the explanation below.) The definition provides, in effect, that no information, material, or property of a United States person acquired during such searches shall be disclosed, disseminated or used for any purpose or retained for longer than 24 hours unless a court order is obtained under section 304 of this title or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person. This provision is virtually identical to the minimization procedure contained in section 101(h)(4) of the Act which governs the acquisition of the communications of United States persons obtained during an electronic surveillance of the same categories of foreign power approved by the Attorney General pursuant to section 102 of the Act.

The second modification to the Senate amendment involves the addition of item (B) to the language of section 301(5). This provides that the term "physical search" does not include "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." This language is intended to clarify that certain communications intelligence activities undertaken by the United States Government are not encompassed by the definition of "physical search." It is identical to language contained in 18 U.S.C. 2511(2)(e), pertaining to the interception of wire, oral, or electronic communications for law enforcement purposes, where it was included to clarify that the intelligence activities were not covered by 18 U.S.C. 2511.

Section 302

Section 302 did not appear in the Senate amendment and was added in its entirety by the conferees. It is very similar to section 102 of the Act which authorizes the President, through the Attorney General, to authorize electronic surveillances without a court order for periods up to a year of certain categories of foreign powers, as defined in section 101 of the Act.

Section 302 authorizes the President, through the Attorney General, to authorize physical searches without a court order for periods up to a year if the Attorney General certifies in writing and under oath that the physical search is solely directed at the 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) of FISA; that there is no substantial likelihood that the search will involve the premises, information, material, or property of a United States person; and that the proposed minimization procedures meet the requirements imposed by the definition of "minimization procedures" contained in section 301(4). Section 302 also requires that the minimization procedures approved by the Attorney General have been reported to the intelligence committees 30 days prior to their effective date, unless the Attorney General determines that their immediate use is required and provides the reason for this determination to the intelligence committees.

Like electronic surveillance conducted under title I of the Act, section 302 requires the Attorney General to file the certifications required by this section under seal with the Foreign Intelligence Surveillance Court, established by section 103 of the Act. These certifications remain sealed unless an application is made for a court order pursuant to section 301(4) and section 303, or the certification is necessary to determine the legality of the physical search under section 305(g). The Attorney General is also authorized by section 302 to direct specific landlords, custodians, or other specified persons to provide certain assistance to such searches and to maintain appropriate secrecy, as well as to provide appropriate compensation for assistance rendered.

Similar to sections 102(b) and 103 of the Act pertaining to electronic surveillance, section 302 also provides in general terms that the Attorney General may file applications for court orders authorizing physical searches with the Foreign Intelligence Surveillance Court ("the Court") if the President has authorized the Attorney General to do so; and, in turn, authorizes the Court to grant orders in accordance with section 304 approving such physical searches. The Court is specifically authorized to hear applications and grant orders authorizing physical searches, except that no judge may hear an application for an order which has previously been denied by another judge designated under the Act. The court of review established under the Act is authorized to hear appeals from denials of applications made under this title, and provision is made for the records of all proceedings under this title to be maintained under security procedures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of Central Intelligence.

The conferees agreed to the addition of section 302 in order to provide the Attorney General with the same authority with respect to physical searches that the Attorney General is currently authorized by title I of the FISA with respect to electronic surveillances.

Section 303

Section 303 sets forth the requirements for applications for a court order approving a physical search pursuant to this title. It is identical to section 302 of the Senate amendment except that a new subsection (a)(8) has been added by the conferees which provides that in addition to the other statements and certifications required by section 303 to be part of the application to the court, the Attorney General shall, where the physical search involves a search of a residence of a United States person, state what investigative

techniques have been previously utilized to obtain the foreign intelligence information concerned and the degree to which these techniques resulted in acquiring such information.

In adding this requirement to the application process, the conferees recognize that the search of a residence of a United States person raises special concerns and sensitivities. While a certification must accompany all applications for physical searches that the foreign intelligence information cannot be obtained by normal investigative means, the conferees believe in the case of residential searches, the Court should be specifically apprised of the investigative efforts previously made to acquire the information in question and what the results of those efforts have been before an order is granted.

Section 304

Section 304 provides the grounds upon which a judge on the Foreign Intelligence Surveillance Court may grant an order authorizing a physical search and provides what such orders shall contain. It also provides time limits for which orders may be granted and provides for extensions of orders. It also authorizes judges on the Court to assess compliance with the statute at any time after a physical search has been approved or carried out. Similar to the provisions of section 105(e) pertaining to electronic surveillances, the Attorney General is authorized to approve emergency searches in accordance with the conditions set forth in the section. Finally, section 304 provides that applications and orders granted under this title shall remain available to the Court for a period of ten years.

Section 304 is identical to section 303 of the Senate amendment with two exceptions. Section 303(a)(3)(C) of the Senate amendment has been deleted because it appears to have been included as the result of administrative error. Section 303(c)(1) has been amended by reducing the period for which a court order may authorize a physical search pursuant to this title from 90 days to 45 days. The conferees believe a 45-day period is adequate in terms of conducting searches pursuant to this title.

Section 305

Section 305 governs the use of information obtained from physical searches authorized pursuant to this title as well as use of information about the searches themselves. It parallels the provisions of section 106 of the Act pertaining to electronic surveillances.

Section 305 provides that information concerning a United States person obtained from physical searches pursuant to this title cannot be used or disclosed by federal officers and employees except as provided in the minimization procedures set forth in section 301(4). No information obtained from such searches may be used for law enforcement purposes without the advance authorization of the Attorney General. Whenever in a federal or state criminal or civil proceeding, the U.S. Government authorizes the use of information derived from such searches, it is required to notify the person whose premises or property or information was the subject of the search. Once so advised, the person may move to suppress the use of the information derived from the search on the grounds that

the information was unlawfully acquired or the search was not made in conformity with an order of authorization or approval. If such a motion is made, the court receiving the motion, or the U.S. district court in the district where the motion is received by another authority, shall, 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 other materials relating to the search necessary to determine whether the search was lawfully authorized and conducted. If the court determines the search was not lawfully authorized, the information derived from the search must be suppressed.

Section 305 is identical to section 304 of the Senate amendment except for the following modifications agreed to by the conferees:

(1) Subsection (b) was added in its entirety. This subsection provides that where a physical search authorized pursuant to this title 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 U.S. person whose residence was searched of the fact of the search and identify any property that was seized, altered, or reproduced during such search. While the conferees appreciate that most physical searches authorized pursuant to this title will likely remain secret for national security reasons, where those searches involve the residence of United States persons, continuing consideration should be given by the Attorney General to providing notice of the search if continued secrecy no longer becomes necessary, or in situations where a mistake is made and a search is conducted of a residence of other than the target of the search. In such circumstances, the conferees believe notice should be provided.

(2) Subsections (d) and (e) were modified by the conferees by striking the phrase "of the premises or property of that aggrieved person" as it had appeared in subsections 304(c) and (d) of the Senate amendment. The effect of these modifications is to make these subsections consistent with the definition of "aggrieved person" which includes not only persons whose premises or property are searched, but also persons about whom information is sought by such searches (regardless of whether they own the property or premises involved).

(3) The final modification made by the conferees to the Senate amendment involves the inclusion in the last sentence of subsection (g) of the phrase: "or may require the Attorney General to provide to the aggrieved person a summary of such materials." The last sentence of subsection (g) addresses the situation referred to above, where a motion has been made by the subject of the search (i.e. "aggrieved person") to suppress information obtained from the search for purposes of a criminal, civil or administrative proceeding, and the Attorney General has filed an affidavit that disclosure to the "aggrieved person" would be harmful to the national security. At this juncture, the court is required to conduct an ex parte, in camera proceeding to determine the legality of the physical search. As part of this process, the court may determine, under

subsection (g), to provide the "aggrieved person," in accordance with appropriate security procedures and protective orders, with portions of the application, order, or other materials only where necessary to make an accurate determination of the legality of the physical search. The modification agreed to by the conferees would provide the court in such circumstances with the additional option of requiring the Attorney General to provide to the aggrieved person a summary of the relevant materials, without having to divulge the highly sensitive details of the application, order or other supporting materials.

Section 306

Section 306, providing for semiannual reports to the intelligence committees, is similar to section 305 of the Senate amendment.

The conferees agreed, however, that in addition to keeping the intelligence committees "fully informed" on a semiannual basis, the Attorney General should provide semiannual reports to both the intelligence committees and the judiciary committees of the House of Representatives and the Senate with respect to physical searches pursuant to this title and particularly which involved United States persons. Accordingly, section 306 was modified to impose such a requirement, requiring that the total number of applications for searches be specified; that the number of orders either granted, modified, or denied be specified; and that the number of physical searches involving the residences, offices, or personal property of United States persons be specified, as well as the number of occasions, if any, where the Attorney General provided notice to a U.S. person whose residence was the subject of a physical search authorized by the title pursuant to section 305(b).

Section 307

Section 307 provides penalties for violations of this title and is identical to section 306 of the Senate amendment.

Section 308

Section 308 provides for civil actions arising from violations of this title and is identical to section 307 of the Senate amendment.

Section 309

Section 309 pertains to authorization of physical searches by the President, through the Attorney General, in time of war and is identical to section 308 of the Senate amendment.

SECTION 808

Section 808 of the conference report would create a new misdemeanor offense applicable to federal employees who knowingly remove classified documents or materials without authority, with the intent to retain them at an unauthorized location. Persons convicted of such offense could be fined up to $1,000 or imprisoned for up to one year, or both. The conferees agreed the provision of documents or materials to the Congress shall not constitute an offense under this section.

Section 808 is similar to section 710 of the Senate amendment. The House bill did not contain a similar provision.

SECTION 809

Section 809 of the conference report would require the President to submit a report to Congress which would:

(1) review the respective policy functions and operational roles of the executive branch agencies involved in identifying and countering threats to United States industry posed by foreign industrial espionage, including the manner in which those functions and roles are coordinated;

(2) describe the means by which information on such threats and on methods to protect against them is communicated to U.S. industries in general and specifically to U.S. companies known to be targets of foreign industrial espionage;

(3) describe specific measures which are or could be undertaken to improve the coordination and communication described above; and

(4) discuss the threat to United States industries posed by foreign industrial espionage, including foreign governments involved, industrial sectors, information and technologies targeted, and the methods by which the espionage is conducted.

The portion of the report describing the nature of the threat is to be updated annually. The existing requirement contained in the Defense Production Act for a report on foreign industrial espionage targeting critical technologies would be clarified to ensure that the report examines not only espionage directed by foreign governments but also that directly assisted by foreign governments.

Section 809 is identical to section 711 of the Senate amendment. The House bill did not contain a similar provision.

SECTION 810

Section 810 of the conference report provides that funding from the base budget for the National Security Agency shall be transferred to the United States Army signals intelligence activities directed at counternarcotics targets. Section 712 of the Senate amendment provided that not less than $10,000,000 should be transferred for this purpose. The conferees agreed that not less than $5,000,000 was the appropriate level of resources for this provision.

Section 810 is otherwise identical to section 710 of the Senate amendment except for technical drafting differences.

SECTION 811

Section 811 is similar to section 703 of the Senate amendment. The House bill had no similar provision.

Section 811 provides for the coordination of counterintelligence activities by establishing a National Counterintelligence Policy Board and charging it with certain functions, and by requiring the heads of departments and agencies of the executive branch to report certain counterintelligence information to the Federal Bureau of Investigation (FBI) and to cooperate in subsequent investigations which the FBI may undertake involving the department or agency's

employees, operations, or information. A reciprocal obligation is imposed on the FBI to provide pertinent espionage information to affected departments and agencies and to consult with respect to subsequent investigative actions which involve the department or agency concerned. Both obligations may be waived by the President in extraordinary circumstances. The President must report to the intelligence committees within 30 days of the waiver that this authority has been exercised and provide the reasons for the waiver, either at that time or as soon as national security considerations permit. An annual report to the appropriate congressional committees is required of the Director of the FBI, in consultation with the Director of Central Intelligence and Secretary of Defense, with respect to compliance with the obligations imposed by section 811 during the preceding year.

The conferees made several modifications to the Senate amendment.

Section 811(a) which establishes the National Counterintelligence Policy Board was modified to eliminate specific designation of the Chairman and members of the Board. The conferees believe such designations are more appropriately left to the discretion of the President. At the same time, it is the conferees' understanding that the President will provide for participation on the Board by representatives of the CIA, FBI, the Department of Defense, State, and Justice, and the National Security Council.

Section 811(c)(1)(A), which sets forth the circumstances under which departments and agencies must report counterintelligence information to the FBI, was modified to require such reports where information is obtained "which indicates that classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or agent of a foreign power." The Senate amendment had provided that the information must indicate that classified information "is being, or may have been, deliberately disclosed (etc.)" The conferees believed that this formulation was likely to result in information not being reported to the FBI until a department or agency had determined for itself that there had been an intentional compromise by an employee. A report at this point may well prejudice the FBI's ability to pursue the case investigatively.

In requiring the heads of departments and agencies to ensure that the FBI is immediately advised of any information which indicates classified information has been, or may have been, disclosed in an unauthorized manner to a foreign power or agent of a foreign power, the conferees do not intend that the department or agency report information to the FBI which is baseless, scurrilous, or patently without foundation. Nor is it the intent of the conferees to require information to be reported to the FBI which indicates only that classified information was left vulnerable to compromise to unauthorized persons, e.g. by leaving a safe unlocked or classified documents unsecured in a hotel room, in violation of applicable security regulations; or which indicates that classified information has been leaked without authorization to the press (and is therefore available to foreign powers and agents of foreign powers). Rather, the intent of the conferees is that when departments and agencies receive information indicating that classified information has been, or may have been, compromised to a foreign power or agent of a

foreign power through clandestine activities or means, human or technical, a report to the FBI is required. If there is reasonable doubt with respect to whether a report is required by this section, departments and agencies should consult informally with appropriate representatives of the FBI to resolve the issue.

The conferees made two modifications to the Senate amendment in section 811(c)(2), which establishes reciprocal reporting requirements for the FBI. The first modification was to change the obligation to report "counterintelligence information" to "espionage information." The conferees believe this narrower term better expresses their intent. The second modification was to eliminate the requirement in the Senate amendment that the FBI consult in advance with respect to investigative activities it might undertake involving the personnel, operations, or information of the department or agency concerned. The conferees believed that this requirement to consult in advance on every aspect of an investigation could impact adversely on the FBI's ability to conduct an espionage investigation. Accordingly, the requirement to consult "in advance" was eliminated. The conferees nonetheless believe that an appropriate level of consultation is desirable on a continuing basis where an espionage investigation involves the personnel, operations, or information of another department or agency.

The conferees also amended subsection (c)(4) of the Senate amendment by including as recipients of the annual compliance report the Committees on Judiciary in the Senate and House of Representatives. Should these reports contain highly classified information pertaining to U.S. intelligence operations, the conferees anticipate that such information will be provided in an appropriately classified supplement to the intelligence committees.

TITLE IX—COMMISSION ON THE ROLES AND CAPABILITIES OF THE UNITED STATES INTELLIGENCE COMMUNITY

Title VIII of the Senate amendment established a Commission to review the roles and capabilities of the U.S. intelligence community. The House bill contained no similar provision.

The Commission would consist of seventeen members, nine appointed by the President and eight appointed by the congressional leadership. The Commission would provide a comprehensive and independent review and evaluation of the activities of the U.S. intelligence community in the aftermath of the Cold War. In order to achieve that objective, the Senate amendment contained a list of nineteen specific topics for the Commission to consider. This review would represent one of the most comprehensive assessments of the intelligence community since its inception in 1947.

Title IX is similar to title VIII of the Senate amendment but contains several modifications agreed to by the conferees.

First, the conferees specified that no more than five of the nine Commission members appointed by the President may be from the same political party. This change is intended to enhance the credibility of the Commission by ensuring that the Commission is not perceived as a partisan organization.

Second, recognizing that members of the President's Foreign Intelligence Advisory Board (PFIAB) may be appointed to the Commission, the conferees agreed to modify the language in the Senate

amendment that prohibited current intelligence community employees from serving on the Commission staff. The conference agreement permits up to three intelligence community employees who are currently detailed to the Executive Office of the President to work for the Commission. However, none of these individuals are eligible to serve as the Commission's staff director. The conferees also agreed to permit the use of intelligence community employees for clerical and administrative duties.

Third, the conferees agreed to modify three of the specific topics the Commission is to consider. The topics now include what functions should continue to be assigned to the organizations of the intelligence community, including the Central Intelligence Agency (CIA); whether the organization and framework of the organizations of the intelligence community, including the CIA, provide the optimal structure; and the manner in which the U.S. intelligence community compares to the intelligence communities of other countries in general.

Finally, due to the extraordinary sensitivity of the issues to be considered by the Commission, the conferees agreed to adopt an amendment waiving the provisions of the Federal Advisory Committee Act requiring public access to advisory committee meetings. The conferees also agreed to waive the provisions of the Freedom of Information Act with regard to the Commission's records until those records are transferred to the National Archives.

The conferees expect the President and the other appointing authorities to move expeditiously in appointing Commission members. The conferees believe that Commission members must be prepared to invest a substantial amount of time in the Commission's activities given the importance and complexity of the many issues that the Commission must review.

The conferees emphasize that the primary objective of this provision is to produce a credible, independent and objective review of the intelligence community. The conferees believe that this review should be conducted in a non-partisan manner, and without preconception about the appropriateness of current levels of spending on intelligence programs and activities. The conferees urge the appointing authorities to keep these objectives, which will significantly determine the utility to a future Congress of the Commission's final report, in mind as they select Commission members.

PROVISIONS NOT INCLUDED IN THE CONFERENCE REPORT

Personnel ceiling adjustments

Section 103 of the Senate amendment authorized the Director of Central Intelligence to exceed the personnel ceilings established by the amendment in certain circumstances. The House bill did not contain a similar provision.

While the authority contained in section 103 of the Senate amendment had been a part of intelligence authorization acts for a number of years, the conferees believed that the continued inclusion of the provision was inconsistent with congressional, and other, mandates to significantly reduce the number of employees in the intelligence community. The conferees therefore agreed to ex-

clude section 103 of the Senate amendment from the conference report.

Disclosure of classified information by Members of Congress and executive branch officers and employees

Section 304 of the House bill prohibited, during fiscal years 1995, any element of the United States Government for which funds are authorized by the Intelligence Authorization Act for Fiscal Year 1995 from providing any classified information derived from that element's intelligence or intelligence-related activities to a member of the House of Representatives until that member had signed an oath of secrecy and the oath had been published in the Congressional Record. Section 305 of the House bill would have extended the coverage of section 304 to members of the Senate and officers or employees of the executive branch. The Senate amendment did not contain similar provisions. The House recedes.

Confirmation of the General Counsel of the Central Intelligence Agency

Section 402 of the Senate amendment established the CIA General Counsel as a Senate-confirmed Presidential appointee position. The House bill contained no similar provision.

On the basis of the record developed in hearings held by the House committee on this issue, it was the judgment of a majority of the House conferees that extending a confirmation requirement to the CIA General Counsel position was not necessary. The Senate recedes.

Report concerning the cost of classification

Section 703 of the House bill required the Director of Central Intelligence, within seven days of the enactment of the Act, to submit a report, in classified and unclassified form, on classification costs to the congressional intelligence committees. The report would identify: the cost of classifying documents and keeping information classified within each agency of the intelligence community; the number of personnel within each such agency assigned to classifying documents and keeping information classified; and a plan, with specific goals, to reduce expenditures for keeping information classified for each such agency. The Senate amendment contained no similar provision.

A report which addresses the concerns embodied in section 703 of the House bill was delivered to the House Intelligence Committee on September 21, 1994. Although not entirely responsive to the request which had formed the basis for section 703, the conferees believed that the report which was provided, and the promise contained within it to devise an improved cost definition and tracking methodology, were sufficient to warrant the exclusion of the section from the conference report.

Disclosure of consumer credit reports for counterintelligence purposes

Section 704 of the Senate amendment amended the Fair Credit Reporting Act to provide the Federal Bureau of Investigation (FBI) with a means of obtaining access to consumer credit records in

counterintelligence investigations. The House bill did not contain a similar provision.

The conferees were aware that a provision providing FBI access to consumer credit records was a part of H.R. 1015, a bill reported from the House Banking Committee and passed by the House in June. Although not the same as the provision in the Senate version of the intelligence authorization bill, the provision in H.R. 1015 did form the basis for negotiations between representatives of the Department of Justice and the congressional banking and judiciary committees. Those negotiations produced an agreement satisfactory to all parties and strongly supported by the conferees. The conferees believe that it is important that the FBI be authorized to access consumer credit records for counterintelligence purposes.

In deference to the jurisdictional concerns of the banking committees, and with the assurance that every effort would be made to clear the legislation containing the agreement for the President's signature in the 103rd Congress, the conferees agreed to exclude section 704 from the conference report. However, the conferees intend to pursue similar legislation during the drafting of the fiscal year 1996 intelligence authorization bill if the banking committees' measure containing this provision is not enacted this year.

Interdiction of aerial drug trafficking

Section 901 of the House bill indicated that, while it was the policy of the United States to provide intelligence assistance to foreign governments to support their efforts to interdict aerial drug trafficking, such assistance was for purposes other than facilitating the intentional damage or destruction of aircraft in violation of international law. Section 902 of the House bill expressed the sense of Congress that executive branch interpretations of law relevant to the provision of assistance to foreign governments for aerial drug interdiction should be reviewed. The Senate amendment contained no similar provisions.

The conferees were aware that section 1012 of the National Defense Authorization Act for Fiscal Year 1995 addressed the issue of United States assistance to the aerial drug interdiction efforts of foreign governments in a broader manner than had been attempted in sections 901 and 902. Accordingly, the conferees agreed to exclude sections 901 and 902 from the conference report.

Espionage committed in any district

Section 803 of the House bill and section 707 of the Senate amendment provided that the trial for any offense involving a violation of certain espionage or related statutes which was begun or committed out of the jurisdiction of any particular state or district may be held in the District of Columbia or in any other district authorized by law.

The conferees were aware that the Violent Crimes Control and Law Enforcement Act of 1994 contains a section addressing the issue addressed by section 803 and section 707. Accordingly, the conferees agreed to exclude a provision on this matter from the conference report.

From the Permanent Select Committee on Intelligence, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

DAN GLICKMAN,
BILL RICHARDSON,
NORMAN D. DICKS,
JULIAN C. DIXON,
ROBERT TORRICELLI,
RONALD COLEMAN,
DAVID E. SKAGGS,
JAMES H. BILBRAY,
NANCY PELOSI,
GREG LAUGHLIN,
BUD CRAMER,
JACK REED,
LARRY COMBEST,
DOUG BEREUTER,
ROBERT K. DORNAN,
BILL YOUNG,
GEORGE W. GEKAS,
JAMES V. HANSEN,
JERRY LEWIS,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of sections 601 and 704 of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
JOE KENNEDY,
LARRY LAROCCO,
AL MCCANDLESS,
MICHAEL N. CASTLE,

As additional conferees from the Committee on Government Operations, for consideration of section 601 of the House bill, and modifications committed to conference:

JOHN CONYERS, Jr.,
EDOLPHUS TOWNS,
BILL CLINGER,

As additional conferees from the Committee on the Judiciary, for consideration of sections 802–804 of the House bill and sections 601, 703–707, and 709–712 of the Senate amendment, and modifications committee to conference:

HENRY HYDE,

Managers on the Part of the House.

DENNIS DECONCINI,
JOHN GLENN,
BOB KERREY,
RICHARD H. BRYAN,
BOB GRAHAM,
JOHN F. KERRY,
MAX BAUCUS,
J. BENNETT JOHNSTON,
JOHN WARNER,
ALFONSE D'AMATO,
JOHN C. DANFORTH,
JOHN H. CHAFEE,
TED STEVENS,
RICHARD G. LUGAR,
MALCOLM WALLOP,

From the Committee on Armed Services:

SAM NUNN,
STROM THURMOND,

Managers on the Part of the Senate.

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