SEC. 1215. AUTHORITY FOR SECRETARY OF DEFENSE TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR MILITARY OPERATIONS ABROAD.

(a) AUTHORITY TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR MILITARY OPERATIONS.—Subsection (a) of section 431 of title 10, United States Code, is amended by inserting "and military operations" after "intelligence collection activities".

(b) CONGRESSIONAL COMMITTEE REFERENCES.—

(1) DEFINITIONS.—Subsection (c) of such section is amended by adding at the end the following new paragraphs:

"(3) The term 'congressional intelligence committees' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

"(4) The term 'appropriate congressional committees' means—

"(A) with respect to a matter that pertains to a commercial activity undertaken under this subchapter to provide security for intelligence collection activities, the congressional defense committees and the congressional intelligence committees; and

"(B) with respect to a matter that pertains to a commercial activity undertaken under this subchapter to provide security for military operations, the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.".

(2) CONFORMING AMENDMENT.—Section 437 of such title is amended by striking subsection (c).

(c) REPORTING OF AUDITS.—The second sentence of section 432(b)(2) of such title is

amended to read as follows: “The results of any such audit shall be promptly reported to the appropriate congressional committees.”.

(d) AUTHORITY TO WAIVE OTHER FEDERAL LAWS WHEN NECESSARY TO MAINTAIN SECURITY.—Section 433(b)(1) of such title is amended by inserting “or military operation” after “intelligence activity”.

(e) LIMITATIONS.—Section 435 of such title is amended—

(1) in subsection (a), by inserting “or military operation” after “intelligence activity”; and

(2) in subsection (b), by inserting “or military operations” after “intelligence activities”.

(f) CONGRESSIONAL OVERSIGHT.—Section 437 of such title is amended by striking “congressional defense committees and the congressional intelligence committees” in subsections (a) and (b) and inserting “appropriate congressional committees”.

(g) CLERICAL AMENDMENTS.—

(1) SUBCHAPTER HEADING.—(A) The heading of subchapter II of chapter 21 of such title is amended to read as follows:

“SUBCHAPTER II—DEFENSE COMMERCIAL ACTIVITIES”.

(B) The item relating to that subchapter in the table of subchapters at the beginning of such chapter is amended to read as follows:

“II. Defense Commercial Activities ……..…431.”.

(2) SECTION HEADING.—(A) The heading of section 431 of such title is amended to read as follows:

“**§ 431. Authority to engage in commercial activities as security for intelligence collection**

activities and military operations".

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

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

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would establish a statutory authority for the Secretary of Defense to authorize the conduct of those commercial activities necessary to provide security for authorized military operations abroad. This statutory authority is similar to the established intelligence commercial activity authority, but pertains to military operations that are conducted clandestinely, but not for the purpose of intelligence collection. These military operations may require the same level of security as certain intelligence collection activities to prevent compromise of the military operation.

Additional classified background information regarding the Department of Defense's (DoD's) commercial cover program will be made available to the armed services committees.

The Department of Defense does not anticipate using the authority granted to the Secretary of Defense in section 433(b) of title 10, United States Code, to waive any federal export control laws or regulations. Although the Department of Defense has never used this authority under the current statute to waive any federal export control laws or regulations, should there be such a proposal in the future, the Department of Defense would consult with the appropriate entities of the Executive Branch.

Budgetary Implications: This proposed authority is an extension of current authorized activities. As a result, there are no budget implications. The DoD components electing to use this authority to provide security will utilize funds already appropriated for security activities supporting authorized military operations. In addition, this statutory authority would provide that funds generated by operational commercial activities may be used to offset necessary and reasonable expenses arising from those activities, with excess funds to be deposited in the Treasury as miscellaneous receipts.

RESOURCE REQUIREMENTS ($MILLIONS)								
FY	**FY 2016**	**FY 2017**	**FY 20178**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**

Amount	0.0	0.0	0.0	0.0	0.0	Operation & Maintenance, Defense-Wide	Various	Various

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

TITLE 10—ARMED FORCES

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CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

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SUBCHAPTER II—~~INTELLIGENCE~~ **DEFENSE** COMMERCIAL ACTIVITIES

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

(a) AUTHORITY.—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities **and military operations** abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, 2017.

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

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

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) DEFINITIONS.—In this subchapter:

(1) The term "commercial activities" means activities that are conducted in a manner consistent with prevailing commercial practices and includes—

(A) the acquisition, use, sale, storage and disposal of goods and services;

(B) entering into employment contracts and leases and other agreements for real and personal property;

(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

(D) acquiring licenses, registrations, permits, and insurance; and

(E) establishing corporations, partnerships, and other legal entities.

(2) The term "intelligence collection activities" means the collection of foreign intelligence and counterintelligence information.

(3) The term "congressional intelligence committees" has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(4) The term "appropriate congressional committees" means—

(A) with respect to a matter that pertains to a commercial activity undertaken under this subchapter to provide security for intelligence collection activities, the congressional defense committees and the congressional intelligence committees; and

(B) with respect to a matter that pertains to a commercial activity undertaken under this subchapter to provide security for military operations, the Committee on Armed Services of the Senate and the Committee on Armed Services of House of Representatives.

§ 432. Use, disposition, and auditing of funds

(a) USE OF FUNDS.—Funds generated by a commercial activity authorized pursuant to this subchapter may be used to offset necessary and reasonable expenses arising from that activity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the activity concerned in a secure manner. Any funds generated by the activity in excess of those required for that purpose shall be deposited, as often as may be practicable, into the Treasury as miscellaneous receipts.

(b) AUDITS.—(1) The Secretary of Defense shall assign an organization within the Department of Defense to have auditing responsibility with respect to activities authorized under this subchapter.

(2) That organization shall audit the use and disposition of funds generated by any commercial activity authorized under this subchapter not less often than annually. The results of ~~all~~ any such ~~audits~~ audit shall be promptly reported to the ~~congressional defense committees and the congressional intelligence committees (as defined in section 437(c) of this title)~~ **appropriate congressional committees**.

§ 433. Relationship with other Federal laws

(a) IN GENERAL.-Except as provided by subsection (b), a commercial activity conducted pursuant to this subchapter shall be carried out in accordance with applicable Federal law.

(b) AUTHORIZATION OF WAIVERS WHEN NECESSARY TO MAINTAIN SECURITY.-(1) If the Secretary of Defense determines, in connection with a commercial activity authorized pursuant to section 431 of this title, that compliance with certain Federal laws or regulations pertaining to the management and administration of Federal agencies would create an unacceptable risk of compromise of an authorized intelligence activity **or military operation**, the Secretary may, to the extent necessary to prevent such compromise, waive compliance with such laws or regulations.

(2) Any determination and waiver by the Secretary under paragraph (1) shall be made in writing and shall include a specification of the laws and regulations for which compliance by the commercial activity concerned is not required consistent with this section.

(3) The authority of the Secretary under paragraph (1) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, an Assistant Secretary of Defense, or a Secretary of a military department.

(c) FEDERAL LAWS AND REGULATIONS.-For purposes of this section, Federal laws and regulations pertaining to the management and administration of Federal agencies are only those Federal laws and regulations pertaining to the following:

(1) The receipt and use of appropriated and nonappropriated funds.
(2) The acquisition or management of property or services.
(3) Information disclosure, retention, and management.
(4) The employment of personnel.
(5) Payments for travel and housing.
(6) The establishment of legal entities or government instrumentalities.
(7) Foreign trade or financial transaction restrictions that would reveal the commercial activity as an activity of the United States Government.

§ 434. Reservation of defenses and immunities

The submission to judicial proceedings in a State or other legal jurisdiction, in connection with a commercial activity undertaken pursuant to this subchapter, shall not constitute a waiver of the defenses and immunities of the United States.

§ 435. Limitations

(a) LAWFUL ACTIVITIES.-Nothing in this subchapter authorizes the conduct of any intelligence activity **<u>or military operation</u>** that is not otherwise authorized by law or Executive order.

(b) DOMESTIC ACTIVITIES.-Personnel conducting commercial activity authorized by this subchapter may only engage in those activities in the United States to the extent necessary to support intelligence activities **<u>or military operations</u>** abroad.

(c) PROVIDING GOODS AND SERVICES TO THE DEPARTMENT OF DEFENSE.-Commercial activity may not be undertaken within the United States for the purpose of providing goods and services to the Department of Defense, other than as may be necessary to provide security for the activities subject to this subchapter.

(d) NOTICE TO UNITED STATES PERSONS.-(1) In carrying out a commercial activity authorized under this subchapter, the Secretary of Defense may not permit an entity engaged in such activity to employ a United States person in an operational, managerial, or supervisory position, and may not assign or detail a United States person to perform operational, managerial, or supervisory duties for such an entity, unless that person is informed in advance of the intelligence security purpose of that activity.

(2) In this subsection, the term "United States person" means an individual who is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

§ 436. Regulations

The Secretary of Defense shall prescribe regulations to implement the authority provided in this subchapter. Such regulations shall be consistent with this subchapter and shall at a minimum—

(1) specify all elements of the Department of Defense who are authorized to engage in commercial activities pursuant to this subchapter;

(2) require the personal approval of the Secretary or Deputy Secretary of Defense for all sensitive activities to be authorized pursuant to this subchapter;

(3) specify all officials who are authorized to grant waivers of laws or regulations pursuant to section 433(b) of this title, or to approve the establishment or conduct of commercial activities pursuant to this subchapter;

(4) designate a single office within the Department of Defense to be responsible for the oversight of all activities authorized under this subchapter;

(5) require that each commercial activity proposed to be authorized under this subchapter be subject to appropriate legal review before the activity is authorized; and

(6) provide for appropriate internal audit controls and oversight for such activities.

§ 437. Congressional oversight

(a) PROPOSED REGULATIONS.—Copies of regulations proposed to be prescribed under section 436 of this title (including any proposed revision to such regulations) shall be submitted to the ~~congressional defense committees and the congressional intelligence committees~~ **appropriate congressional committees** not less than 30 days before they take effect.

(b) CURRENT INFORMATION.—The Secretary of Defense shall ensure that the ~~congressional defense committees and the congressional intelligence committees~~ **appropriate congressional committees** are kept fully and currently informed of actions taken pursuant to this subchapter, including any significant anticipated activity to be authorized pursuant to this subchapter.

~~(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term 'congressional intelligence committees' has the meaning given the term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).~~