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Notes of Decisions

which had outlived their usefulness; to remedy situation, Congress chose to terminate all advisory committees. *Carpenter v. Morton*, D.C.Nev. 1976, 424 F.Supp. 603.

3. Powers and duties

Congress contemplated that this Appendix would affect existing substantive law and that if it was later decided advisory committees were necessary, Congress would enact legislation to recharter them; Secretary of Interior had no obligation or authority to recharter advisory boards of which plaintiffs were members. *Carpenter v. Morton*, D.C.Nev. 1976, 424 F.Supp. 603.

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section 7(b), this Act shall become effective upon the following October 6, 1972.

APPENDIX 3

INSPECTOR GENERAL ACT OF 1978

Pub.L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended Pub.L. 96-88, Title V, § 508(n), Oct. 17, 1979, 93 Stat. 694; Pub.L. 97-113, Title VII, § 705, Dec. 29, 1981, 95 Stat. 1544; Pub.L. 97-252, Title XI, § 1117(a)-(c), Sept. 8, 1982, 96 Stat. 75-752; Pub.L. 99-93, Title I, § 150(a), Aug. 16, 1985, 99 Stat. 427; Pub.L. 99-399, Title IV, § 412(a), Aug. 27, 1986, 100 Stat. 867.

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| <p>Sec.</p> <ol style="list-style-type: none"> 1. Short title. 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved. 3. Appointment of Inspectors General; supervision; removal; political activities; appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations. 4. Duties and responsibilities; report of criminal violations to Attorney General. 5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems. | <p>Sec.</p> <ol style="list-style-type: none"> 6. Authority of Inspectors General; information and assistance from Federal agencies; unreasonable refusal; office space and equipment. 7. Complaints by employees; disclosure of identity; reprisals. 8. Additional provisions with respect to the Inspector General of the Department of Defense. 8A. Special provisions relating to the Agency for International Development. 9. Transfer of functions. 10. Conforming and technical amendments. 11. Definitions. 12. Effective date. |
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§ 1. Short title

That this Act be cited as the "Inspector General Act of 1978".

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

§ 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved

In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Education, the Department of Housing and Urban Development, the Department of the Interior, the Department of Labor, the Department of Transportation, the Agency for International Development, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, the United States Information Agency, the Veterans' Administration, and the Department of State;

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

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

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thereby¹ is hereby established in each of such establishments an office of Inspector General.

(As amended Pub.L. 96-88, Title V, § 508(n)(1), Oct. 17, 1979, 93 Stat. 694; Pub.L. 97-113, Title VII, § 705(a)(1), Dec. 29, 1981, 95 Stat. 1544; Pub.L. 97-252, Title XI, § 1117(a)(1), Sept. 8, 1982, 96 Stat. 750; Pub.L. 99-93, Title I, § 150(a)(1), Aug. 16, 1985, 99 Stat. 427; Pub.L. 99-399, Title IV, § 412(a)(1), Aug. 27, 1986, 100 Stat. 867.)

¹ So in original. Probably should be "there".

1986 Amendment. Par. (1). Pub.L. 99-399 inserted "the United States Information Agency," before "the Veterans' Administration".

1985 Amendment. Par. (1). Pub.L. 99-93 added reference to the Department of State.

1982 Amendment. Par. (1). Pub.L. 97-252, § 1117(a)(1), inserted "the Department of Defense," following "Commerce".

1981 Amendment. Par. (1). Pub.L. 97-113 inserted "the Agency for International Development," after "Transportation".

1979 Amendment. Par. (1). Pub.L. 96-44 inserted "the Department of Education," following "Commerce".

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-88, effective May 4, 1980, with specified exceptions, see section 601 of Pub.L. 96-88, set out as an Effective Date note under section 3401 of Title 20, Education.

Community Services Administration. The Community Services Administration, which was

established by section 601 of the Economic Opportunity Act of 1964, as amended (42 U.S.C.A. § 2941), was terminated when the Economic Opportunity Act of 1964, Pub.L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for Titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub.L. 97-35, Title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C.A. § 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub.L. 97-35, which is classified to 42 U.S.C.A. § 9905.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676. See, also, Pub.L. 96-88, 1979 U.S. Code Cong. and Adm. News, p. 1514; Pub.L. 97-113, 1981 U.S. Code Cong. and Adm. News, p. 2404; Pub.L. 99-93, 1985 U.S. Code Cong. and Adm. News, p. 329; Pub.L. 99-399, 1986 U.S. Code Cong. and Adm. News, p. 1865.

§ 3. Appointment of Inspector General; supervision; removal; political activities; appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations

(a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(b) An Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(c) For the purposes of section 7324 of Title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

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the Department of Health and Human Services by
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42 U.S.C.A. § 9905.

Legislative History. For legislative history and
purpose of Pub.L. 95-452, see 1978 U.S. Code
Cong. and Adm. News, p. 2676. See, also, Pub.L.
96-88, 1979 U.S. Code Cong. and Adm. News, p.
1514; Pub.L. 97-113, 1981 U.S. Code Cong. and
Adm. News, p. 2404; Pub.L. 99-93, 1985 U.S.
Code Cong. and Adm. News, p. 329; Pub.L.
99-399, 1986 U.S. Code Cong. and Adm. News, p.
1865.

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§ 4
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Legislative History. For legislative history and
purpose of Pub.L. 95-452, see 1978 U.S. Code
Cong. and Adm. News, p. 2676.

§ 4. Duties and responsibilities; report of criminal violations to Attorney Gen-
eral

(a) It shall be the duty and responsibility of each Inspector General, with respect
to the establishment within which his Office is established—

(1) to provide policy direction for and to conduct, supervise, and coordinate
audits and investigations relating to the programs and operations of such
establishment;

(2) to review existing and proposed legislation and regulations relating to
programs and operations of such establishment and to make recommendations in
the semiannual reports required by section 5(a) concerning the impact of such
legislation or regulations on the economy and efficiency in the administration of
programs and operations administered or financed by such establishment or the
prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other
activities carried out or financed by such establishment for the purpose of
promoting economy and efficiency in the administration of, or preventing and
detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate rela-
tionships between such establishment and other Federal agencies, State and
local governmental agencies, and non-governmental entities with respect to (A)
all matters relating to the promotion of economy and efficiency in the adminis-
tration of, or the prevention and detection of fraud and abuse in, programs and
operations administered or financed by such establishment, or (B) the identifica-
tion and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and
currently informed, by means of the reports required by section 5 and otherwise
concerning fraud and other serious problems, abuses, and deficiencies relating
to the administration of programs and operations administered or financed by
such establishment, to recommend corrective action concerning such problems,
abuses, and deficiencies, and to report on the progress made in implementing
such corrective action.

(b) In carrying out the responsibilities specified in subsection (a)(1), each Inspector
General shall—

(1) comply with standards established by the Comptroller General of the
United States for audits of Federal establishments, organizations, programs,
activities, and functions;

(2) establish guidelines for determining when it shall be appropriate to use
non-Federal auditors; and

(3) take appropriate steps to assure that any work performed by non-Federal
auditors complies with the standards established by the Comptroller General as
described in paragraph (1).

(c) In carrying out the duties and responsibilities established under this Act, each
Inspector General shall give particular regard to the activities of the Comptroller
General of the United States with a view toward avoiding duplication and insuring
effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each
Inspector General shall report expeditiously to the Attorney General whenever the
Inspector General has reasonable grounds to believe there has been a violation of
Federal criminal law.

Legislative History. For legislative history and
purpose of Pub.L. 95-452, see 1978 U.S. Code
Cong. and Adm. News, p. 2676.

Notes of Decisions

1. General Services Administration programs

The Inspector General has the responsibility
and the power to conduct, supervise and coor-
dinate audits and investigations relating to pro-
grams of the General Services Administration in
order to promote efficiency and to prevent fraud
and abuse, but unlike the Internal Revenue Ser-

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vice, which by section 7122 of Title 26 loses its power to continue civilly once the Justice Department begins to move criminally, the powers of the

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Inspector General are not so limited. U.S. v. Art Metal U.S.A., Inc., D.C.N.J.1980, 484 F.Supp. 884.

§ 5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period; and

(6) a listing of each audit report completed by the Office during the reporting period.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing any comments such head deems appropriate.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

(e)(1) Nothing in this section shall be construed to authorize the public disclosure of information which is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.

(3) Nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(As amended Pub.L. 97-252, Title XI, § 1117(c), Sept. 8, 1982, 96 Stat. 752.)

1982 Amendment. Subsec. (c). Pub.L. 97-252 added subsec. (c).

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

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shall, not later than April 30 and October 31 of each
year, submit to the head of the Office during the
month periods ending March 31 and September 30. Such
reports shall not be limited to—

significant problems, abuses, and deficiencies relating to
programs and operations of such establishment disclosed
during the reporting period;

the recommendations for corrective action made by the
establishment with respect to significant problems, abuses,
and deficiencies pursuant to paragraph (1);

if each significant recommendation described in previous
reports for which corrective action has not been completed;
matters referred to prosecutive authorities and the prosecu-
tors which have resulted;

each report made to the head of the establishment under
the reporting period; and
audit report completed by the Office during the reporting

Each Inspector General shall be furnished to the head of
the establishment not later than April 30 and October 31 of each year and
to the head to the appropriate committees or subcommittees of
Congress, together with a report by the head of the establishment
containing any comments such head deems appropriate.

of the transmission of the semiannual reports of each
establishment, the head of each establishment shall make copies
of such reports available to the public upon request and at a reasonable cost.

Each Inspector General shall report immediately to the head of the establish-
ment the Inspector General becomes aware of particularly
serious abuses, or deficiencies relating to the administration of
such establishment. The head of the establishment shall
submit such reports to the appropriate committees or subcommittees of Con-
gress, together with a report by the head of the establishment
containing any comments such head deems appropriate.

Such reports shall be construed to authorize the public disclosure

is prohibited from disclosure by any other provision of law;
required by Executive order to be protected from disclosure in
the defense of national security or in the conduct of foreign

going criminal investigation.

Paragraph (1)(C), any report under this section may be
in the form which includes information with respect to a part of
the investigation if such information has been included in a public

on or in any other provision of this Act shall be construed
as withholding of information from the Congress, or from
any committee thereof.

Title XI, § 1117(c), Sept. 8, 1982, 96 Stat. 752.)

Pub.L. 97-252

Legislative History. For legislative history and
purpose of Pub.L. 95-452, see 1978 U.S. Code
Cong. and Adm. News, p. 2676.

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§ 6

Note 1

§ 6. Authority of Inspector General; information and assistance from Federal agencies; unreasonable refusal; office space and equipment

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal State or local governmental agency or unit thereof;

(4) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided, That* procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies;

(5) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(6) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of Title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(7) to obtain services as authorized by section 3109 of Title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-18 of the General Schedule by section 5332 of Title 5, United States Code; and

(8) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b)(1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

Notes of Decisions

1. Subpoena powers

Inspector General of Department of Defense had statutory authority to issue subpoena, which

sought evidence pertaining to defense contractor's audits, at request of Defense Contract Audit Agency so long as he did so in furtherance of purpose within his statutory authority and exercised independent judgment in deciding to issue subpoena. *U.S. v. Westinghouse Elec. Corp.*, C.A.3 (Pa.) 1986, 788 F.2d 164.

Inspector General could inspect government contractor's business records that had been sub-

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poenaed for grand jury investigation, notwithstanding that he had recommended that investigation, where Inspector General had subpoenaed those records prior to referring matter to Justice Department, criminal investigation had been completed and prosecution had been declined, and inspection was critical to Inspector General's investigation. In re Grand Jury Matter, E.D.Pa. 1986, 640 F.Supp. 63.

Likelihood or imminence of criminal proceedings did not render enforcement of a related administrative subpoena impermissible and did not, therefore, preclude enforcement of a subpoena duces tecum sought by the Inspector General of the General Services Administration for certain tax and related business records of taxpayers in connection with an investigation of payoffs and

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other fraudulent practices where the agency in question had not itself made a formal recommendation to the Justice Department to prosecute, and the summons or subpoena had a civil purpose. U.S. v. Art Metal-U.S.A., Inc. D.C.N.J.1980, 484 F.Supp. 884.

Acquisition of the tax returns and related documents of a government contractor pursuant to an investigation of fraud is within the scope of the subpoena powers of the Inspector General. Id.

Tax and related business records of taxpayers were not beyond the scope of the subpoena power of the Inspector General of the General Services Administration when he sought to discover same in connection with an investigation of payoffs and other fraudulent practices. Id.

§ 7. Complaints by employees; disclosure of identity; reprisals

(a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

§ 8. Additional provisions with respect to the Inspector General of the Department of Defense

(a) No member of the Armed Forces, active or reserve, shall be appointed Inspector General of the Department of Defense.

(b)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations or the issuance of subpoenas, which require access to information concerning—

- (A) sensitive operational plans;
- (B) intelligence matters;
- (C) counterintelligence matters;
- (D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or
- (E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1) the Secretary of Defense may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to preserve the national security interests of the United States.

(3) If the Secretary of Defense exercises any power under paragraph (1) or (2), the Inspector General shall submit a statement concerning such exercise within

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Tax and related business records of taxpayers were not beyond the scope of the subpoena power of the Inspector General of the General Services Administration when he sought to discover same in connection with an investigation of payoffs and other fraudulent practices. *Id.*

employees; disclosure of identity; reprisals

may receive and investigate complaints or information establishing concern concerning the possible existence of a violation of law, rules, or regulations, or mismanagement, or of authority or a substantial and specific danger to the

shall not, after receipt of a complaint or information, disclose the identity of the employee without the consent of the Inspector General, unless the Inspector General determines such disclosure is unavoidable in the investigation.

has authority to take, direct others to take, recommend, or advise, shall not, with respect to such authority, take or act against any employee as a reprisal for making a complaint or information to an Inspector General, unless the complaint or information disclosed with the knowledge that it was false or with intent to defraud.

ative history and
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with respect to the Inspector General of the Department

Armed Forces, active or reserve, shall be appointed by the Department of Defense.

the last two sentences of section 3(a), the Inspector General shall have authority, direction, and control of the Secretary of Defense in audits or investigations, or the issuance of subpoenas, which are necessary for the performance of his duties concerning—

national plans;

atters;

ance matters;

al investigations by other administrative units of the Department of Defense related to national security; or

the disclosure of which would constitute a serious threat to the national security.

information described in paragraph (1) the Secretary of Defense shall not require the Inspector General from initiating, carrying out, or completing, or from issuing any subpoena, after the Inspector General has initiated, carried out, or completed such audit or investigation or the Secretary determines that such prohibition is necessary in the interest of the national security of the United States.

Defense exercises any power under paragraph (1) or (2), the Secretary shall submit a statement concerning such exercise within

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§ 8

thirty days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary shall, within thirty days after submission of a statement under paragraph (3), transmit a statement of the reasons for the exercise of power under paragraph (1) or (2) to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees.

(c) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Department of Defense shall—

(1) be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department;

(2) initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate;

(3) provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness;

(4) investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate;

(5) develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs;

(6) monitor and evaluate the adherence of Department auditors to internal audit, contract audit, and internal review principles, policies, and procedures;

(7) develop policy, evaluate program performance, and monitor actions taken by all components of the Department in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States;

(8) request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments); and

(9) give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) Notwithstanding section 4(d), the Inspector General of the Department of Defense shall expeditiously report suspected or alleged violations of chapter 47 of title 10, United States Code (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense.

(e) For the purposes of section 7, a member of the Armed Forces shall be deemed to be an employee of the Department of Defense.

(f)(1) Each semiannual report prepared by the Inspector General of the Department of Defense under section 5(a) shall include information concerning the numbers and types of contract audits conducted by the Department during the reporting period. Each such report shall be transmitted by the Secretary of Defense to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(2) Any report required to be transmitted by the Secretary of Defense to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified in such section, to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives.

(g) The provisions of section 1385 of title 18, United States Code, shall not apply to audits and investigations conducted by, under the direction of, or at the request of the Inspector General of the Department of Defense to carry out the purposes of this Act.

(As amended Pub.L. 97-252, Title XI, § 1117(b), Sept. 8, 1982, 96 Stat. 751.)

1982 Amendment. Pub.L. 97-252 amended section generally, substituting additional provisions relating to the Inspector General of the Department of Defense for provisions relating to semiannual reports of Secretary of Defense on audit, investigative, and inspection units of Defense Department, availability of such reports to the public, exclusion of national security material, delegation of the Secretary's duties, submittal of proposed legislation, the establishment of a task force to study operation of audit, investigative and inspection units, membership in the task force, and the submission of a comprehensive report by the task force to the Secretary of Defense and Director of Office of Management and Budget, who were to submit a final report to Congress not later than April 1, 1980.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

Notes of Decisions

1. Subpoenas

Inspector General of the Department of Defense was entitled to enforcement of an administrative subpoena seeking evidence pertaining to a defense contractor's internal audits, despite defense contractor's contentions that subpoena was improperly issued on behalf of the Defense Contract Audit Agency to coerce settlement of a related administrative dispute, that scope and subject of subpoena were too broad, and that compliance would be unduly burdensome. *U.S. v. Westinghouse Elec. Corp.*, D.C.Pa.1985, 615 F.Supp. 1163.

§ 8A. Special provisions relating to the Agency for International Development

(a) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Agency for International Development—

(1) shall supervise, direct, and control all security activities relating to the programs and operations of that Agency, subject to the supervision of the Administrator of that Agency; and

(2) to the extent requested by the Director of the United States International Development Cooperation Agency (after consultation with the Administrator of the Agency for International Development), shall supervise, direct, and control all audit, investigative, and security activities relating to programs and operations within the United States International Development Cooperation Agency.

(b) In addition to the Assistant Inspector Generals provided for in section 3(d) of this Act, the Inspector General of the Agency for International Development shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Security who shall have the responsibility for supervising the performance of security activities relating to programs and operations of the Agency for International Development.

(c) The semiannual reports required to be submitted to the Administrator of the Agency for International Development pursuant to section 5(b) of this Act shall also be submitted to the Director of the United States International Development Cooperation Agency.

(d) In addition to the officers and employees provided for in section 6(a)(6) of this Act, members of the Foreign Service may, at the request of the Inspector General of the Agency for International Development, be assigned as employees of the Inspector General. Members of the Foreign Service so assigned shall be responsible solely to the Inspector General, and the Inspector General (or his or her designee) shall prepare the performance evaluation reports for such members.

(e) In establishing and staffing field offices pursuant to section 6(c) of this Act, the Administrator of the Agency for International Development shall not be bound by overseas personnel ceilings established under the Monitoring Overseas Direct Employment policy.

(f) The reference in section 7(a) of this Act to an employee of the establishment shall, with respect to the Inspector General of the Agency for International Development, be construed to include an employee of or under the United States International Development Cooperation Agency.

(g) The Inspector General of the Agency for International Development shall be in addition to the officers provided for in section 624(a) of the Foreign Assistance Act of 1961 [22 U.S.C.A. § 2384(a)].

(b)
include
Foreign
(Added)

Refer
Act of
87-195,
Part I
classified
seq.) 63

§ 9.
(a)

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Notes of Decisions

1. Subpoenas

Inspector General of the Department of Defense was entitled to enforcement of an administrative subpoena seeking evidence pertaining to a defense contractor's internal audits, despite defense contractor's contentions that subpoena was improperly issued on behalf of the Defense Contract Audit Agency to coerce settlement of a related administrative dispute, that scope and subject of subpoena were too broad, and that compliance would be unduly burdensome. *U.S. v. Westinghouse Elec. Corp.*, D.C.Pa.1985, 615 F.Supp. 1163.

Legislative history and
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relating to the Agency for International Development

other duties and responsibilities specified in this Act, the Agency for International Development—

direct, and control all security activities relating to the functions of that Agency, subject to the supervision of the Agency; and

requested by the Director of the United States International Development Agency (after consultation with the Administrator of the United States International Development Cooperation Agency.

Assistant Inspectors General provided for in section 3(d) of the Act shall, in accordance with the laws and regulations governing the civil service, appoint and supervise the personnel of the Agency who shall have the responsibility for the supervision of security activities relating to programs and operations of the Agency.

Reports required to be submitted to the Administrator of the Agency for International Development pursuant to section 5(b) of this Act shall also be submitted to the Director of the United States International Development Agency.

Officers and employees provided for in section 6(a)(6) of this Act may, at the request of the Inspector General of the Agency for International Development, be assigned as employees of the Inspector General of the Foreign Service so assigned shall be responsible solely to the Inspector General (or his or her designee) shall submit evaluation reports for such members.

Staffing field offices pursuant to section 6(c) of this Act, the Agency for International Development shall not be bound by the ceilings established under the Monitoring Overseas Direct

Section 7(a) of this Act to an employee of the establishment of the Inspector General of the Agency for International Development shall include an employee of or under the United States International Development Agency.

Inspector General of the Agency for International Development shall be in accordance with the provisions provided for in section 624(a) of the Foreign Assistance Act [2384(a)].

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(h) As used in this Act, the term "Agency for International Development" includes any successor agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 [22 U.S.C.A. § 2151 et seq.].

(Added Pub.L. 97-113, Title VII, § 705(a)(3), Dec. 29, 1981, 95 Stat. 1644.)

References in Text. The Foreign Assistance Act of 1961, referred to in subsec. (h), is Pub.L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Part I of the Foreign Assistance Act of 1961 is classified generally to subchapter I (§ 2151 et seq.) of chapter 32 of Title 22, Foreign Relations

and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 97-113, see 1981 U.S. Code Cong. and Adm. News, p. 2404.

§ 9. Transfer of functions

(a) There shall be transferred—

(1) to the Office of Inspector General—

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigation" and the "Office of Audit";

(B) of the Department of Commerce, the offices of that department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;

(C) of the Department of Defense, the offices of that department referred to as the "Defense Audit Service" and the "Office of Inspector General, Defense Logistics Agency", and that portion of the office of that department referred to as the "Defense Investigative Service" which has responsibility for the investigation of alleged criminal violations;

(D) of the Department of Education, all functions of the Inspector General of Health, Education, and Welfare or of the Office of Inspector General of Health, Education, and Welfare relating to functions transferred by section 301 of the Department of Education Organization Act [20 U.S.C.A. § 3441];

(E) of the Department of Housing and Urban Development, the office of that department referred to as the "Office of Inspector General";

(F) of the Department of the Interior, the office of that department referred to as the "Office of Audit and Investigation";

(G) of the Department of Labor, the office of that department referred to as the "Office of Special Investigations";

(H) of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the Department, the "Offices of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration", and the "Office of Program Audits, Urban Mass Transportation Administration";

(I) of the Community Services Administration, the offices of that agency referred to as the "Inspections Division", the "External Audit Division", and the "Internal Audit Division";

(J) of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

(K) of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

(L) of the National Aeronautics and Space Administration, the offices of that agency referred to as the "Management Audit Office" and the "Office of Inspections and Security";

(M) of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations"; and

(N) of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations"; and

(2) such other offices or agencies, or functions, powers, or duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act,

except that there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the applicable Office of Inspector General.

(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or agency shall lapse. Any person who, on the effective date of this Act [Oct. 1, 1978], held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in an Office of Inspector General to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

(As amended Pub.L. 96-88, Title V, § 508(n)(2), Oct. 17, 1979, 93 Stat. 694; Pub.L. 97-252, Title XI, § 1117(a)(2), (3), Sept. 8, 1982, 96 Stat. 750.)

1982 Amendment. Subsec. (a)(1). Pub.L. 97-252 added subpar. (C). Former subpars. (C) to (M) redesignated (D) to (N), respectively.

1979 Amendment. Subsec. (a)(1). Pub.L. 96-88 redesignated subpars. (C) to (L) as (D) to (M) and added a new subpar. (C).

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-88, effective May 4, 1980, with specified exceptions, see section 601 of Pub.L. 96-88, set out as an Effective Date note under section 3401 of Title 20, Education.

Community Services Administration. The Community Services Administration, which was established by section 601 of the Economic Opportunity Act of 1964, as amended (42 U.S.C.A. § 2941), was terminated when the Economic Opportunity Act of 1964, Pub.L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for Titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub.L. 97-35, Title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C.A. § 9912(a). An Office of Community

Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub.L. 97-35, which is classified to 42 U.S.C.A. § 9905.

Transfer of Audit Personnel to Inspector General, Department of Defense. Section 1117(e) of Pub.L. 97-252 provided that: "In addition to the positions transferred to the Office of the Inspector General of the Department of Defense, pursuant to the amendments made by subsection (a) of this section [to sections 2(1), 9(a)(1), and 11(1) of this Act], the Secretary of Defense shall transfer to the Office of Inspector General of the Department of Defense not less than one hundred additional audit positions. The Inspector General of the Department of Defense shall fill such positions with persons trained to perform contract audits."

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676. See, also, Pub.L. 96-88, 1979 U.S. Code Cong. and Adm. News, p. 1514.

§ 10. Conforming and technical amendments

[Section amended sections 5315 and 5316 of Title 5, Government Organization and Employees, and section 3522 of Title 42, The Public Health and Welfare, which amendments have been executed to text.]

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

§ 11. Definitions

As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Housing and Urban Development, the Interior,

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es or agencies, or functions, powers, or duties thereof, as
ishment involved may determine are properly related to
office and would, if so transferred, further the purposes of

t be transferred to an Inspector General under paragraph
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ts, liabilities, contracts, property, records, and unexpended
s, authorizations, allocations, and other funds employed,
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all the functions, powers, and duties of any office or agency
to this subsection, such office or agency shall lapse. Any
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ce with the General Schedule, and who, without a break in
an Office of Inspector General to a position having duties
ormed immediately preceding such appointment shall contin-
the new position at not less than the rate provided for the
duration of service in the new position.

Title V, § 508(n)(2), Oct. 17, 1979, 93 Stat. 694; Pub.L. 97-252, Title
1982, 96 Stat. 750.)

c. (a)(1). Pub.L.
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positions transferred to the Office of the Inspector
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to the amendments made by subsection (a) of this
section [to sections 2(1), 9(a)(1), and 11(1) of this
Act], the Secretary of Defense shall transfer to the
Office of Inspector General of the Department of
Defense not less than one hundred additional
audit positions. The Inspector General of the
Department of Defense shall fill such positions
with persons trained to perform contract audits."

Legislative History. For legislative history and
purpose of Pub.L. 95-452, see 1978 U.S. Code
Cong. and Adm. News, p. 2676. See, also, Pub.L.
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head of the establishment" means the Secretary of Agriculture,
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§ 12

Labor, State, or Transportation or the Administrator of the Agency for International Development, Community Services, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs, or the Director of the United States Information Agency¹ as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Housing and Urban Development, the Interior, Labor, State, or Transportation or the Agency for International Development, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, the United States Information Agency or the Veterans' Administration, as the case may be;

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of Inspector General of an establishment; and

(5) the term "Federal agency" means an agency as defined in section 552(e) of Title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

(As amended Pub.L. 96-88, Title V, § 509(n)(3), (4), Oct. 17, 1979, 93 Stat. 695; Pub.L. 97-113, Title VII, § 705(a)(2), Dec. 29, 1981, 95 Stat. 1544; Pub.L. 97-252, Title XI, § 1117(a)(4), (5), Sept. 8, 1982, 96 Stat. 750; Pub.L. 99-93, Title I, § 150(a)(2), Aug. 16, 1985, 99 Stat. 427; Pub.L. 99-399, Title IV, § 412(a)(2), Aug. 27, 1986, 100 Stat. 867.)

¹ So in original. Probably should be followed by a comma.

1986 Amendment. Par. (1). Pub.L. 99-399, § 412(a)(2)(A), inserted "or the Director of the United States Information Agency" before "as the case may be".

Par. (2). Pub.L. 99-399, § 412(a)(2)(B), inserted "the United States Information Agency" before "or the Veterans' Administration".

1985 Amendment. Pars. (1), (2). Pub.L. 99-93 inserted "State," after "Labor,".

1982 Amendment. Par. (1). Pub.L. 97-252, § 1117(a)(4), inserted "Defense," following "Commerce,".

Par. (2). Pub.L. 97-252, § 1117(a)(5), inserted "Defense," following "Commerce,".

1981 Amendment. Par. (1). Pub.L. 97-113, § 705(a)(2)(A), inserted "the Agency for International Development," after "Administrator of".

Par. (2). Pub.L. 97-113, § 705(a)(2)(B), inserted "the Agency for International Development," after "Transportation or".

1979 Amendment. Par. (1). Pub.L. 96-88, § 508(n)(3), inserted "Education," following "Commerce,".

Par. (2). Pub.L. 96-88, § 508(n)(4), inserted "Education," following "Commerce,".

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-88, effective May 4, 1980, with

specified exceptions, see section 601 of Pub.L. 96-88; set out as an Effective Date note under section 3401 of Title 20, Education.

Community Services Administration. The Community Services Administration, which was established by section 601 of the Economic Opportunity Act of 1964, as amended (42 U.S.C.A. § 2941), was terminated when the Economic Opportunity Act of 1964, Pub.L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for Titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub.L. 97-35, Title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C.A. § 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub.L. 97-35, which is classified to 42 U.S.C.A. § 9905.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676. See, also, Pub.L. 96-88, 1979 U.S. Code Cong. and Adm. News, p. 1514; Pub.L. 97-113, 1981 U.S. Code Cong. and Adm. News, p. 2404; Pub.L. 99-93, 1985 U.S. Code Cong. and Adm. News, p. 329; Pub.L. 99-399, 1986 U.S. Code Cong. and Adm. News, p. 1865.

§ 12. Effective date

The provisions of this Act and the amendments made by this Act [see section 10 of this Act] shall take effect October 1, 1978.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

S 15190

CONGRESSIONAL RECORD — SENATE

October 27, 1987

By Mr. BIDEN (for himself, Mr. THURMOND, Mr. KENNEDY and Mr. HATCH):

S. 1822. A bill to make certain amendments to the Sentencing Reform Act of 1984 and to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes; placed on the calendar.

By Mr. STAFFORD (by request):

S. 1823. A bill to amend title 23, United States Code, to provide for the construction of new toll highways and for other purposes; to the Committee on Environment and Public Works.

By Mr. CRANSTON:

S. 1824. A bill to amend the Federal Aviation Act of 1958 to require that capacity levels be established at certain airports; to the Committee on Commerce, Science, and Transportation.

By Mr. BYRD (for Mr. CRANSTON (for himself and Mr. D'AMATO)):

S.J. Res. 209. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes; placed on the calendar.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KENNEDY (for himself, Mr. MITZENBAUM, Mr. HATCH, Mr. MIKULSKI, Mr. PELL, Mr. DOLE, Mr. DODD, Mr. GLENN, Mr. CRANSTON, Mr. DURENBERGER, Mr. LAUTENBERG, Mr. SIMON, Mr. MOYNIHAN, Mr. CONRAD, Mr. MATSUNAGA, Mr. CHAFEE, Mr. KERRY, Mr. WEICKER, Mr. THURMOND, Mr. BURDICK, Mr. DECONCINI, Mr. LEVIN, Mr. ADAMS, Mr. WARNER, Mr. INOUE, Mr. RIEGLE, Mr. BRADLEY, Mr. BOND, Mr. MITCHELL, Mr. PROXMIRE, Mr. DIXON, Mr. STAFFORD, Mr. NUNN, Mr. DOMENICI, Mr. GARN, Mr. SHELBY, Mr. FRYOR, Mr. D'AMATO, Mr. BENTSEN, and Mr. SANFORD):

S. Res. 303. A resolution to commend the efforts and commitment of the organizers and participants of "Justice For All Day," November 17, 1987; to the Committee on the Judiciary.

By Mr. LEAHY; from the Committee on Agriculture, Nutrition, and Forestry:

S. Res. 304. An original resolution to increase the amount allocated to the Committee on Agriculture, Nutrition, and Forestry by S. Res. 80 relating to committee funding for fiscal year 1988; to the Committee on Rules and Administration.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 305. A resolution to direct the Senate legal counsel to represent and to authorize the production of documents by Phillip Q. Cohen in the case of Moreno versus Small Business Administration, et al.; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 1818. A bill to make requirements for the preparation, and transmittal to the Congress, of Presidential findings for certain intelligence operations; to provide mandatory penalties for deceiving Congress; and to establish an Independent Inspector General for

the CIA; to the Select Committee on Intelligence.

NATIONAL SECURITY REFORM ACT

Mr. SPECTER. Mr. President, hearings before the Senate Intelligence Committee and joint hearings before the Select Senate and House Committees on the Iran/Contra matter have demonstrated the need for significant action in order to establish the appropriate role for congressional oversight pursuant to the checks and balances contemplated by the U.S. Constitution. Notwithstanding any action which may be taken by the President by way of Executive order on this issue, legislative change is necessary to impose statutory requirements governing this or future administrations where any such Executive orders might be countermanded.

This bill has four goals:

First, to encourage timely consultation with key Members of Congress to obtain the benefit of their insights to avoid future blunders like the transaction with Iran on arms for hostages;

Second, to provide for effective congressional oversight by specific statutory requirements establishing precise time limits for notice where the President decides not to consult in advance;

Third, to establish mandatory penalties where executive branch officials make false statements to congressional committees; and

Fourth, to add an Inspector General for the Central Intelligence Agency to help assure lawful internal compliance on matters which do not come within the purview of congressional oversight.

SECTION 2

Notwithstanding the obvious failure of the executive branch to provide requisite information to Congress under the provisions of existing statutes, some have argued that there was compliance because of the vagaries of current law. In order to prevent a repetition of such conduct, the National Security Act of 1947 (50 U.S.C. 413) and section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422), known as the Hughes-Ryan amendment, are made more specific by this bill. Existing law prohibits the expenditure of funds by the Central Intelligence Agency for covert activities "unless and until the President finds that each such operation is important to the national security of the United States." Efforts have been made to justify the CIA's action in the Iran/Contra matter by contentions that an oral finding was sufficient and that a later written finding could retroactively justify earlier covert action.

This bill unequivocally requires that the finding be in writing and that the President shall give notice and a copy of any finding to the House and Senate Intelligence Committees contemporaneously with the finding, but in no event later than 24 hours after it is made. A limited exception is provided for an oral finding in situations where the President deems that imme-

diately action by the United States is required to deal with the emergency situation affecting vital national interests and time does not permit the preparation of a written finding. In that event, the finding must be immediately reduced to writing after the action is orally approved, with the written finding to be completed no later than 24 hours after the making of the oral finding.

Where an oral finding is used, there is the additional requirement that the written finding shall include a statement of the reasons of the President for having first proceeded with an oral finding. This bill further provides that a finding shall be effective only with respect to operations beginning after the finding was made by the President in order to preclude any contention that the finding may retroactively cover prior CIA operations.

These statutory requirements leave no room for doubt that no covert action may be undertaken without complying with the requirements of a written finding and the requisite notice, by any personnel of the executive branch or anyone acting on its behalf including foreign governments or any individual. This specific provision would preclude any future argument that the delivery of arms to Iran was legally justified, after the fact, by a retroactive finding or that other entities or actors were not bound by the same limitations affecting the CIA.

This bill further removes any possible ambiguity in section 501(b) of the President's obligation to notify the House and Senate Intelligence Committees of covert action. Section 501(b) now provides:

(b) The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a) and shall provide a statement of the reasons for not giving prior notice.

The phrase "for which prior notice was not given under subsection (a)" carries the direct implication that the House and Senate Intelligence Committees should have been "fully and currently informed" of covert activities which are covered by section 501(b). It is obvious that the President did not comply with section 501(b) to inform the Intelligence Committees in a "timely fashion" where some 14 months elapsed from the time of the first covert action on the Iranian arms sales to the time that information reached the Intelligence Committees. Yet, some have contended that the exigencies of the situation excused the President from giving earlier notice so that requirements of a "timely fashion" were observed.

This bill removes any room for such future arguments by requiring the President to give notice to the Intelligence Committees contemporaneously with any written or oral finding. In order to remove any conceivable ambi-

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guilty as to the meaning of "contemporaneously," a time certain is added requiring the information to be transmitted no later than 24 hours after the making of an oral or written finding. Absent the experience of the Iran/Contra matter, it would seem unnecessary to put a 24-hour limitation after the requirement of "contemporaneously," but the recent experience that a time certain be affixed so that no one can later claim that "contemporaneously" means days, weeks, months, or even years later.

The requirement that the President shall contemporaneously inform the Intelligence Committees is intended to provide a procedure where the Intelligence Committees might be consulted in advance so that the President would have the benefit of their thinking if he so chose. The language of section 501(a)(1) to keep the Intelligence Committees "fully and currently informed of all intelligence activities" suggests a design for congressional input. Even with such contemporaneous information and the possibility of congressional input, it would remain within the President's power to proceed or not as he chooses.

There is much to recommend the availability of the institutional experience of the Senate and House Intelligence Committees. Had there been a review by the Intelligence Committees of the sale of arms to Iran, it is likely that the policy would never have been implemented. Had members of the Senate and House Intelligence Committees joined the Secretary of State and the Secretary of Defense and others in discouraging Presidential action in selling arms to Iran, the President might well have ceased and desisted on his own. Had the President declined to terminate that disastrous policy, then the Congress might have utilized its power to terminate funding through its appropriations powers, thereby ending the sale of arms to Iran.

The President's obligations on congressional oversight are further limited by excluding notice to the Intelligence Committees where the President determines that it is essential to limit such disclosure to meet extraordinary circumstances affecting the vital interests of the United States. In that event, such notice is to be given only to the chairman and ranking minority members of the Intelligence Committees, the Speaker and minority leader of the House of Representatives and the majority and minority leaders of the Senate. That more limited disclosure gives sufficient assurances of preservation of secrecy. A valid argument could be made that notice should go only to the leadership of both Houses in the interests of secrecy, but the greater familiarity of the chairman and vice-chairman of the Intelligence Committees warrants their being included.

SECTION 3

This bill further provides for a mandatory sentence of imprisonment for any officer or employee of the United States who provides false information to any committee or subcommittee of the Senate or House of Representatives. No matter how rigorous or exacting statutory requirements may be, the oversight function of Congress cannot be accomplished if executive branch officials present false or misleading testimony to the Congress.

This is especially problematic where witnesses appear before the Intelligence Committees in a secret session. Where evidence is provided in a public session, there is an opportunity for others to learn of the false information and to come forward with the truth so that the congressional oversight committees can perform their functions. That is not possible where key executive officials appear in secret and provide false information to the Oversight Committees. Under those circumstances, the committees realistically have little or no opportunity to determine the truth.

While false official statements to such congressional committees are covered by section 1001 of the Criminal Code, (18 U.S.C. 1001), this kind of misconduct, either in secret or public session, is so serious that it warrants a mandatory jail sentence.

While there has been experience with witnesses who return to the committee to apologize for prior testimony, such apologies fall far short of correcting the enormous damage which has been done. Obviously, there is no way to know how much false, deceptive, or misleading evidence has been presented in secret where the truthful information has never come to the attention of the committees. This mandatory jail sentence is intended to put members of the executive branch on notice that the matter is extremely serious as reflected by the heavy penalty.

It is obviously well within the ambit for any witness who appears before a congressional committee to decline to answer any question until that witness has had an opportunity to reflect on the question or to consult with his or her superior. Simply stated, it is understandable if a witness declines to answer or asks for a delay, but it is intolerable for false or deceptive answers to be made. The committee would doubtless consider not insisting on an answer where some reason was advanced for nondisclosure. Where any witness chooses to decline to answer a question, there is always an opportunity for further consideration by both the witness and the committee.

In any event, an enforceable legal obligation to answer does not arise as a practical matter until citation for contempt of Congress is obtained and the court orders an answer. It is only at this point that a witness is subject to a sanction for contempt for failing to answer.

This bill further provides that anyone who gives such false or deceptive information may recant and avoid possible criminal liability by correcting the record within 5 days. This 5-day period should be ample time for rethinking the issue and time to make the appropriate correction.

SECTION 4

The Inspector General Act of 1978, Public Law 95-452, established independent Presidentially-appointed and Senate confirmed IG's in 19 Federal departments and agencies. The creation of these statutory IG's has improved the effectiveness of the Federal Government. The act also ensures that both the Congress and agency heads are receiving independent assessments of programs and operations for which they are accountable or have oversight responsibility. However, the CIA was not included.

Currently, the Inspector General for CIA is usually appointed internally. That process is not conducive to objectivity.

A prime example was the CIA's mining of the harbors of Nicaragua. The CIA official with operational responsibility for that action was next appointed to the position of Inspector General. While he disqualified himself from the ensuring IG investigation of that activity, it is difficult to calculate the objectivity of that investigation by virtue of his presence.

The Intelligence Committee has had access to some IG reports in past years, but for the most part, it has not exercised oversight over the intelligence community's IG's. That has been a responsibility of the Intelligence Oversight Board. The Iran-Contra investigations have raised serious questions about the effectiveness of that body. The Tower Commission found that (III-22): "Lieutenant Colonel North and Vice Admiral Poindexter received legal advice from the President's Intelligence Oversight Board that the restriction on lethal assistance to the Contras did not cover the NSC staff." In addition, review of Executive Order 12334, which establishes the Intelligence Oversight Board, and the operations of the Board itself reveal that the Board is not adequately staffed, that the quality of its legal counsel has been demonstrated to be less than thorough and experienced, and, finally, that its effectiveness is not held in high regard by the Intelligence Committees.

This bill would greatly increase the independence and credibility of the CIA's Inspector General by making the IG a permanent, statutory official subject to appointment by the President and confirmation by the Senate with limitations on grounds for dismissal. To increase accountability to Congress, semiannual and special reports by the Inspector General must be promptly submitted to the Intelligence Committees, as well as to the Director of the CIA.

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Secrecy is provided for, as is subpoena power. While the Director may halt an audit or investigation, he may do so only if:

First, it concerns an ongoing operation;

Second, he finds it vital to national security; and

Third, he reports to the Intelligence Committees within 7 days on the reasons.

The combined effect of an independent IG, mandatory penalties for deceiving Congress, and statutory requirements on notice to Congress on covert action along with written findings are therapeutic steps which should be taken in light of our experience from the Iran/Contra matter.

After the problems were publicly disclosed on the failure of the executive branch to notify the Intelligence Committees on the sale of arms to Iran, there was an exchange of correspondence between the President and the Senate Intelligence Committee. The President wrote to Chairman BOREN by letter dated August 7, 1987, expressing his support for certain key concepts recommended by the Senate Intelligence Committee. Paragraph 6 of the President's letter stated:

In all but the most exceptional circumstances, timely notification to Congress under Section 501(b) of the National Security Act of 1947, as amended, will not be delayed beyond two working days of the initiation of a special activity.

In my judgment, where notice may not be given even in "the most exceptional circumstances" the fundamental requirement of notice is defeated because it remains within the purview of the President to determine what constitutes the "exceptional circumstances." Precise requirements are necessary as set forth in this proposed legislation.

By Mr. LAUTENBERG:

S. 1819. A bill to amend the National Driver Registration Act of 1982 to assist in the identification of operators of aircraft who have driving problems by permitting access to the National Driver Register; to the Committee on Commerce, Science and Transportation.

IDENTIFICATION OF AIRCRAFT OPERATORS WHO HAVE DRIVING PROBLEMS

• Mr. LAUTENBERG. Mr. President, I rise today to introduce a bill aimed at closing a serious loophole in our aviation safety network.

This bill would authorize individuals to provide the Federal Aviation Administration with access to the National Driver Register (NDR) in reviewing pilot applications for medical certification. It would allow the FAA to use this information to verify information provided by pilots, and to help evaluate whether the airman meets minimum medical standards prescribed by the FAA.

The FAA would not be provided access to information more than 3 years old, unless that information per-

tains to a revocation or suspension of a driver's license that is still in effect. The FAA would not be permitted to use the information for purposes not set out in statute.

In addition, the airman would be provided the opportunity to review the NDR information and comment on it in writing. This would protect against false identification of an applicant, and give the applicant the opportunity to provide any explanation for information in the NDR.

With enactment of this provision, it is intended that the FAA will promulgate regulations to require authorization of access to the NDR as a condition of the medical certification process.

In order to legally fly, any pilot must receive regular medical certification. The majority of the exams are performed by private physicians approved by the FAA.

There are several classes of certification. First-class certification is for airline pilots, and must be renewed every 6 months. Second-class certification is for commercial pilots, flight engineers, and flight navigators. It is renewed annually. Private pilots receive third-class certification, which must be renewed every 24 months.

Currently, the FAA requires pilots seeking certification to report drug or alcohol problems, including drunk driving convictions. This is a requirement too many do not comply with. And the FAA does not know who those people are. Therein lies the problem.

Although the majority of pilots take the responsibility that comes with their license seriously, there are those that don't. There are those who might drink and fly. There are those who would not comply with FAA's reporting requirements.

A report by DOT's inspector general in February of this year revealed that this reporting system is faulty. There are 711,648 active airmen now certified by the FAA. The inspector general found that about 10,300 of these pilots had their driving license suspended or revoked for DWI convictions in the last 7 years.

However, 7,850 of the 10,300—of 76 percent—did not report this information to the FAA.

These are the people—those who intentionally do not comply with Federal requirements—whom this bill would specifically address.

Mr. President, let me cite a few examples of where the voluntary reporting system proved lacking.

In February 1986, a commercial cargo pilot was killed when his plane crashed in Tennessee, 3 hours after leaving Milwaukee. His blood alcohol content (BAC) was found to be 0.158, four times higher than the level FAA considers the threshold of impairment.

A review of his driving record indicated a history of drunk driving: 18 months earlier, he demolished his van while driving 100 miles per hour. At

that time, his BAC was 0.26. From 1981 to 1984, he had seven DWI convictions, and had his driver's license revoked.

Yet, he could still fly. And the FAA had no way of knowing about his record.

The inspector general's investigation turned up 262 first-class pilots with at least 1 drunk driving conviction. They included a pilot who had two separate DWI convictions, resulting in a 5-year revocation of his driver's license. The IG also found 29 second- and third-class pilots who had 3 or more DWI convictions since 1983. Combined, the 29 pilots had 94 DWI convictions in that time. This included 1 third-class pilot who had 3 convictions and had his license suspended for 10 years.

Yet, they all could fly, and the FAA had no way of checking into their records.

Mr. President, this is a gap we need to close. A driving record can indicate a pattern of behavior. If someone has a history of drunk driving convictions, we have a right to think about whether we want to allow that person in the cockpit of a plane.

The FAA already has the interest in knowing. Its medical certification application form asks for a great deal of information about a pilot's background. Included on that form is an inquiry about whether the applicant ever had, or now has traffic or other convictions.

But, under current law, the FAA cannot verify the information the applicant provides. The FAA should not fly blind while some pilots fly drunk. This bill would remove the obstacle that prevents the FAA from confirming pilots' backgrounds.

This change has long been endorsed by the National Transportation Safety Board, and is supported by the Department of Transportation. I would note, Mr. President, that similar provisions were included in the Rail Safety Improvement Act, which I introduced in April, and in S. 1539, the rail safety legislation subsequently reported by the Senate Commerce Committee.

I intend to offer this bill as an amendment to the Airport and Airway Capacity Expansion Act when it is considered on the Senate floor. I urge my colleagues to support this important legislation.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1819

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 206 of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended as follows:

(1) In subsection (a), paragraph (1) is amended by substituting the word "transportation" for "highway".

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Independent Roles of Inspectors General and General Counsel. Section 4 of Executive Order 12334 creating the Intelligence Oversight Board (4 December 1981) provides that:

"Inspectors General and General Counsel of the Intelligence Community shall, to the extent permitted by law, report to the Board concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive" (section 4, emphasis added).

The scope of reporting under this provision is similar to that of Section 1.7 of Executive Order 12333, which imposes reporting requirements on the DCI and heads of Intelligence Community components. However, while Section 1.7 of Executive Order 12333 requires agency heads who report to the IOB activities which may be unlawful or contrary to Executive order or Presidential directive to keep the DCI appropriately informed, Section 4 of Executive Order 12334 does not similarly require Inspectors General and General Counsel who report to the IOB to keep the DCI appropriately informed.

7: Section 1.7(i) of E.O. 12333 imposes upon the heads of departments and agencies with organizations in the Intelligence Community the obligation to:

"Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this order."

This section is something of an anomaly in that with one insignificant exception no duties are assigned to Inspectors General or General Counsels by "this Order" (i.e., E.O. 12333). The reference should have been to E.O. 12334, the Order creating the Intelligence Oversight Board, which as noted earlier does assign duties to the Inspectors General and General Counsels. The confusion may have arisen from a

last minute decision to split the Intelligence Activities and IOB provisions into separate Executive Orders.