

Spectrum Provisions in the 2017 National Defense Authorization Act

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President Obama signed into law the National Defense Authorization Act (NDAA) for Fiscal Year 2017. The NDAA sets federal funding levels and outlines the spending and policy priorities for the U.S.

Department of Defense (DOD). The FY17 NDAA includes several provisions related to spectrum management, some of which will make efforts to reallocate federal spectrum for commercial use more challenging.

Section 234 authorizes a pilot program on the modernization and fielding of electromagnetic spectrum warfare systems and electronic warfare systems. Electromagnetic spectrum warfare means electronic warfare that encompasses military communications and sensing operations that occur in the electromagnetic operational domain. The pilot program authorizes a total of 10 electromagnetic spectrum warfare systems and electronic warfare systems across at least two military departments for modernization and fielding. The pilot program ends on September 30, 2023.

Section 240 requires the Under Secretary of Defense for Acquisition, Technology, and Logistics to submit to Congress a strategy on DOD's electronic and electromagnetic spectrum warfare capabilities. Among the items that must be included in the report are a description of the threat environment for electromagnetic spectrum for current and future warfare needs; an assessment of progress on increasing application of innovative electromagnetic spectrum warfighting methods and operational concepts that provide advantages within the electromagnetic spectrum operational domain; and specific attributes needed in future electronic and electromagnetic spectrum warfare capabilities.

Practice Areas

Telecom, Media & Technology

Section 902 provides DOD's Chief Information Officer with the responsibilities for policy, oversight, guidance, and coordination for all DOD matters related to electromagnetic spectrum, including coordination with other Federal and industry agencies, coordination for classified programs, and in coordination with the Under Secretary for Personnel and Readiness, policies related to spectrum management workforce.

Section 1044 requires the Federal Communications Commission (FCC), in coordination with DOD, to establish rules for spectrum licensees that mitigate harmful interference to federal spectrum operations at the Nevada Test and Training Range if the reallocation and auction of spectrum as required by the 2015 Bipartisan Budget Act impacts these operations. This provision creates the precedent for the House and Senate Armed Services Committees to direct the work of the FCC via NDAA. It also seems to shift at least some of the spectrum management coordination role traditionally performed by the National Telecommunications and Information Administration (NTIA) to DOD.

Section 1065 reforms the management and review of DOD use of electromagnetic spectrum. The Secretary of Defense must establish a review and evaluation process for DOD's use of spectrum. That process must consider all requirements related to using such spectrum and ensure that all users of spectrum are involved in the decision-making process concerning the sharing, reassigning, or reallocating of such spectrum, or the relocation of the uses by DOD of such spectrum.

Section 1065 also requires that, at least every two years, the Secretary and the Chairman of the Joint Chiefs of Staff submit to Congress a report on the implications of reallocating spectrum bands identified by NTIA on DOD access to spectrum. The report must address the implications that sharing, reassigning, or reallocating that spectrum might have on DoD missions; whether that would create a loss of essential military capability; and whether that sharing, reassigning, or reallocating that spectrum is possible within ten years of the report. The first report is due 180 days after the NDAA goes into effect in response to the sixth "Interim Progress Report on the Ten-Year Plan and Timetable" issued by NTIA in June 2016 and the seventh such report issued or to be issued.

Section 1698 prohibits the FCC from permitting commercial terrestrial operations in the 1525–1559 megahertz band or the 1626.5–1660.5 megahertz band until 90 days after it resolves concerns of "widespread harmful interference" to DOD's GPS devices by commercial operations in those bands. Every 90 days, the Secretary of Defense must conduct a review of harmful interference to these devices and to notify Congress if there is widespread harmful interference. This review must continue for either two years or until the Secretary determines that commercial services are not causing such interference, whichever is earlier.

The NDAA authorizes \$13,197,000 for Defense Spectrum Organization.

The full text of the NDAA can be found [here](#).