

“Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors” in item 391 and added item 393.

2014—Pub. L. 113–291, div. A, title XVI, § 1633(d), Dec. 19, 2014, 128 Stat. 3643, added item 392.

§ 391. Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors and certain other contractors

(a) DESIGNATION OF DEPARTMENT COMPONENT TO RECEIVE REPORTS.—The Secretary of Defense shall designate a component of the Department of Defense to receive reports of cyber incidents from contractors in accordance with this section and section 393 of this title or from other governmental entities.

(b) PROCEDURES FOR REPORTING CYBER INCIDENTS.—The Secretary of Defense shall establish procedures that require an operationally critical contractor to report in a timely manner to component designated under subsection (a) each time a cyber incident occurs with respect to a network or information system of such operationally critical contractor.

(c) PROCEDURE REQUIREMENTS.—

(1) DESIGNATION AND NOTIFICATION.—The procedures established pursuant to subsection (a) shall include a process for—

(A) designating operationally critical contractors; and

(B) notifying a contractor that it has been designated as an operationally critical contractor.

(2) RAPID REPORTING.—The procedures established pursuant to subsection (a) shall require each operationally critical contractor to rapidly report to the component of the Department designated pursuant to subsection (d)(2)(A) on each cyber incident with respect to any network or information systems of such contractor. Each such report shall include the following:

(A) An assessment by the contractor of the effect of the cyber incident on the ability of the contractor to meet the contractual requirements of the Department.

(B) The technique or method used in such cyber incident.

(C) A sample of any malicious software, if discovered and isolated by the contractor, involved in such cyber incident.

(D) A summary of information compromised by such cyber incident.

(3) DEPARTMENT ASSISTANCE AND ACCESS TO EQUIPMENT AND INFORMATION BY DEPARTMENT PERSONNEL.—The procedures established pursuant to subsection (a) shall—

(A) include mechanisms for Department personnel to, if requested, assist operationally critical contractors in detecting and mitigating penetrations; and

(B) provide that an operationally critical contractor is only required to provide access to equipment or information as described in subparagraph (A) to determine whether information created by or for the Department in connection with any Department program was successfully exfiltrated from a network or information system of such contractor and, if so, what information was exfiltrated.

(4) PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.—The procedures established pursuant to subsection (a) shall provide for the reasonable protection of trade secrets, commercial or financial information, and information that can be used to identify a specific person.

(5) DISSEMINATION OF INFORMATION.—The procedures established pursuant to subsection (a) shall limit the dissemination of information obtained or derived through the procedures to entities—

(A) with missions that may be affected by such information;

(B) that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(C) that conduct counterintelligence or law enforcement investigations; or

(D) for national security purposes, including cyber situational awareness and defense purposes.

(d) PROTECTION FROM LIABILITY OF OPERATIONALLY CRITICAL CONTRACTORS.—(1) No cause of action shall lie or be maintained in any court against any operationally critical contractor, and such action shall be promptly dismissed, for compliance with this section that is conducted in accordance with procedures established pursuant to subsection (b).

(2)(A) Nothing in this section shall be construed—

(i) to require dismissal of a cause of action against an operationally critical contractor that has engaged in willful misconduct in the course of complying with the procedures established pursuant to subsection (b); or

(ii) to undermine or limit the availability of otherwise applicable common law or statutory defenses.

(B) In any action claiming that paragraph (1) does not apply due to willful misconduct described in subparagraph (A), the plaintiff shall have the burden of proving by clear and convincing evidence the willful misconduct by each operationally critical contractor subject to such claim and that such willful misconduct proximately caused injury to the plaintiff.

(C) In this subsection, the term “willful misconduct” means an act or omission that is taken—

(i) intentionally to achieve a wrongful purpose;

(ii) knowingly without legal or factual justification; and

(iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

(e) DEFINITIONS.—In this section:

(1) CYBER INCIDENT.—The term “cyber incident” means actions taken through the use of computer networks that result in an actual or potentially adverse effect on an information system or the information residing therein.

(2) OPERATIONALLY CRITICAL CONTRACTOR.—The term “operationally critical contractor” means a contractor designated by the Secretary for purposes of this section as a critical source of supply for airlift, sealift, intermodal transportation services, or logistical support

that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

(Added Pub. L. 113-291, div. A, title XVI, §1632(a), Dec. 19, 2014, 128 Stat. 3639; amended Pub. L. 114-92, div. A, title XVI, §1641(b), (c)(1), Nov. 25, 2015, 129 Stat. 1115, 1116.)

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-92, §1641(c)(1), substituted “and section 393 of this title” for “and with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (10 U.S.C. 2224 note)”.

Subsecs. (d), (e). Pub. L. 114-92, §1641(b), added subsec. (d) and redesignated former subsec. (d) as (e).

ISSUANCE OF PROCEDURES

Pub. L. 113-291, div. A, title XVI, §1632(b), Dec. 19, 2014, 128 Stat. 3640, provided that: “The Secretary shall establish the procedures required by subsection (b) of section 391 of title 10, United States Code, as added by subsection (a) of this section, not later than 90 days after the date of the enactment of this Act [Dec. 19, 2014].”

ASSESSMENT OF DEPARTMENT POLICIES

Pub. L. 113-291, div. A, title XVI, §1632(c), Dec. 19, 2014, 128 Stat. 3640, provided that:

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of the Act [Dec. 19, 2014], the Secretary of Defense shall complete an assessment of—

“(A) requirements that were in effect on the day before the date of the enactment of this Act for contractors to share information with Department components regarding cyber incidents (as defined in subsection (d) of such section 391 [10 U.S.C. 391]) with respect to networks or information systems of contractors; and

“(B) Department policies and systems for sharing information on cyber incidents with respect to networks or information systems of Department contractors.

“(2) ACTIONS FOLLOWING ASSESSMENT.—Upon completion of the assessment required by paragraph (1), the Secretary shall—

“(A) designate a Department component under subsection (a) of such section 391; and

“(B) issue or revise guidance applicable to Department components that ensures the rapid sharing by the component designated pursuant to such section 391 or section 941 of the National Defense Authorization Act for Fiscal Year 2013 [Pub. L. 112-239] (10 U.S.C. 2224 note) of information relating to cyber incidents with respect to networks or information systems of contractors with other appropriate Department components.”

§ 392. Executive agents for cyber test and training ranges

(a) EXECUTIVE AGENT.—The Secretary of Defense, in consultation with the Principal Cyber Advisor, shall—

(1) designate a senior official from among the personnel of the Department of Defense to act as the executive agent for cyber and information technology test ranges; and

(2) designate a senior official from among the personnel of the Department of Defense to act as the executive agent for cyber and information technology training ranges.

(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—

(1) ESTABLISHMENT.—The Secretary of Defense shall prescribe the roles, responsibilities, and authorities of the executive agents des-

ignated under subsection (a). Such roles, responsibilities, and authorities shall include the development of a biennial integrated plan for cyber and information technology test and training resources.

(2) BIENNIAL INTEGRATED PLAN.—The biennial integrated plan required under paragraph (1) shall include plans for the following:

(A) Developing and maintaining a comprehensive list of cyber and information technology ranges, test facilities, test beds, and other means of testing, training, and developing software, personnel, and tools for accommodating the mission of the Department. Such list shall include resources from both governmental and nongovernmental entities.

(B) Organizing and managing designated cyber and information technology test ranges, including—

(i) establishing the priorities for cyber and information technology ranges to meet Department objectives;

(ii) enforcing standards to meet requirements specified by the United States Cyber Command, the training community, and the research, development, testing, and evaluation community;

(iii) identifying and offering guidance on the opportunities for integration amongst the designated cyber and information technology ranges regarding test, training, and development functions;

(iv) finding opportunities for cost reduction, integration, and coordination improvements for the appropriate cyber and information technology ranges;

(v) adding or consolidating cyber and information technology ranges in the future to better meet the evolving needs of the cyber strategy and resource requirements of the Department;

(vi) finding opportunities to continuously enhance the quality and technical expertise of the cyber and information technology test workforce through training and personnel policies; and

(vii) coordinating with interagency and industry partners on cyber and information technology range issues.

(C) Defining a cyber range architecture that—

(i) may add or consolidate cyber and information technology ranges in the future to better meet the evolving needs of the cyber strategy and resource requirements of the Department;

(ii) coordinates with interagency and industry partners on cyber and information technology range issues;

(iii) allows for integrated closed loop testing in a secure environment of cyber and electronic warfare capabilities;

(iv) supports science and technology development, experimentation, testing and training; and

(v) provides for interconnection with other existing cyber ranges and other kinetic range facilities in a distributed manner.

(D) Certifying all cyber range investments of the Department of Defense.