

Subsec. (c)(1)(B), (C). Pub. L. 116-92, §1632(2)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(2)(B). Pub. L. 116-92, §1632(2)(B), struck out “outside the Department of Defense Information Networks to defeat an ongoing or imminent threat” after “A defensive cyber operation”.

2018—Pub. L. 115-232, §1631(a), renumbered section 130j of this title as this section.

Subsec. (d)(2). Pub. L. 115-232, §1081(a)(1), substituted “section 503 of the National Security Act of 1947 (50 U.S.C. 3093)” for “section 3093 of title 50, United States Code”.

§ 396. Notification requirements for cyber weapons

(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense shall promptly submit to the congressional defense committees notice in writing of the following:

(1) With respect to a cyber capability that is intended for use as a weapon, on a quarterly basis, the aggregated results of all reviews of the capability for legality under international law pursuant to Department of Defense Directive 5000.01 carried out by any military department concerned.

(2) The use as a weapon of any cyber capability that has been approved for such use under international law by a military department no later than 48 hours following such use.

(b) PROCEDURES.—(1) The Secretary of Defense shall establish and submit to the congressional defense committees procedures for complying with the requirements of subsection (a) consistent with the national security of the United States and the protection of operational integrity. The Secretary shall promptly notify the congressional defense committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes.

(2) The congressional defense committees shall ensure that committee procedures designed to protect from unauthorized disclosure classified information relating to national security of the United States are sufficient to protect the information that is submitted to the committees pursuant to this section.

(3) In the event of an unauthorized disclosure of a cyber capability covered by this section, the Secretary shall ensure, to the maximum extent practicable, that the congressional defense committees are notified immediately of the cyber capability concerned. The notification under this paragraph may be verbal or written, but in the event of a verbal notification a written notification shall be provided by not later than 48 hours after the provision of the verbal notification.

(c) EXCEPTIONS.—The notification requirement under subsection (a) does not apply—

(1) to a training exercise conducted with the consent of all nations where the intended effects of the exercise will occur; or

(2) to a covert action (as that term is defined in section 503 of the National Security Act of 1947 (50 U.S.C. 3093)).

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to provide any new authority or to alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.), the Authorization for Use of Military Force (Public

Law 107-40; 50 U.S.C. 1541 note), or any requirement under the National Security Act of 1947 (50 U.S.C. 3001 et seq.).

(Added Pub. L. 115-91, div. A, title XVI, §1631(a), Dec. 12, 2017, 131 Stat. 1737, §130k; renumbered §396 and amended Pub. L. 115-232, div. A, title X, §1081(a)(1), title XVI, §1631(a), Aug. 13, 2018, 132 Stat. 1983, 2123.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (d), is Pub. L. 93-148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

The Authorization for Use of Military Force, referred to in subsec. (d), is Pub. L. 107-40, Sept. 18, 2001, 115 Stat. 224, which is set out as a note under section 1541 of Title 50, War and National Defense.

The National Security Act of 1947, referred to in subsec. (d), is act July 26, 1947, ch. 343, 61 Stat. 495, which is classified principally to chapter 44 (§3001 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2018—Pub. L. 115-232, §1631(a), renumbered section 130k of this title as this section.

Subsec. (c)(2). Pub. L. 115-232, §1081(a)(1), substituted “section 503 of the National Security Act of 1947 (50 U.S.C. 3093)” for “section 3093 of title 50, United States Code”.

§ 397. Principal Information Operations Advisor

(a) DESIGNATION.—Not later than 30 days after the enactment of this Act, the Secretary of Defense shall designate, from among officials appointed to a position in the Department of Defense by and with the advice and consent of the Senate, a Principal Information Operations Advisor to act as the principal advisor to the Secretary on all aspects of information operations conducted by the Department.

(b) RESPONSIBILITIES.—The Principal Information Operations Advisor shall have the following responsibilities:

(1) Oversight of policy, strategy, planning, resource management, operational considerations, personnel, and technology development across all the elements of information operations of the Department.

(2) Overall integration and supervision of the deterrence of, conduct of, and defense against information operations.

(3) Promulgation of policies to ensure adequate coordination and deconfliction with the Department of State, the intelligence community (as such term is defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)), and other relevant agencies and departments of the Federal Government.

(4) Coordination with the head of the Global Engagement Center to support the purpose of the Center (as set forth by section 1287(a)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 22 U.S.C. 2656 note)) and liaison with the Center and other relevant Federal Government entities to support such purpose.

(5) Establishing and supervising a rigorous risk management process to mitigate the risk of potential exposure of United States Per-

sons¹ to information intended exclusively for foreign audiences.

(6) Promulgation of standards for the attribution or public acknowledgment, if any, of operations in the information environment.

(7) Development of guidance for, and promotion of, the capability of the Department to liaison with the private sector and academia on matters relating to the influence activities of malign actors.

(8) Such other matters relating to information operations as the Secretary shall specify for purposes of this subsection.

(Added Pub. L. 116–92, div. A, title XVI, §1631(a)(1), Dec. 20, 2019, 133 Stat. 1741.)

REFERENCES IN TEXT

The enactment of this Act, referred to in subsec. (a), probably means the date of enactment of Pub. L. 116–92, which added this section and was approved Dec. 20, 2019.

CONDUCTING OF MILITARY OPERATIONS IN THE INFORMATION ENVIRONMENT

Pub. L. 116–92, div. A, title XVI, §1631(b)–(i), Dec. 20, 2019, 133 Stat. 1742–1745, provided that:

“(b) AFFIRMING THE AUTHORITY OF THE SECRETARY OF DEFENSE TO CONDUCT MILITARY OPERATIONS IN THE INFORMATION ENVIRONMENT.—(1) Congress affirms that the Secretary of Defense is authorized to conduct military operations, including clandestine operations, in the information environment to defend the United States, allies of the United States, and interests of the United States, including in response to malicious influence activities carried out against the United States or a United States person by a foreign power.

“(2) The military operations referred to in paragraph (1), when appropriately authorized include the conduct of military operations short of hostilities and in areas outside of areas of active hostilities for the purpose of preparation of the environment, influence, force protection, and deterrence of hostilities.

“(c) TREATMENT OF CLANDESTINE MILITARY OPERATIONS IN THE INFORMATION ENVIRONMENT AS TRADITIONAL MILITARY ACTIVITIES.—A clandestine military operation in the information environment shall be considered a traditional military activity for the purposes of section 503(e)(2) of the National Security Act of 1947 (50 U.S.C. 3093(e)(2)).

“(d) QUARTERLY INFORMATION OPERATIONS BRIEFINGS.—(1) Not less frequently than once each quarter, the Secretary of Defense shall provide the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on significant military operations, including all clandestine operations in the information environment, carried out by the Department of Defense during the immediately preceding quarter.

“(2) Each briefing under paragraph (1) shall include, with respect to the military operations in the information environment described in such paragraph, the following:

“(A) An update, disaggregated by geographic and functional command, that describes the operations carried out by the commands.

“(B) An overview of authorities and legal issues applicable to the operations, including any relevant legal limitations.

“(C) An outline of any interagency activities and initiatives relating to the operations.

“(D) Such other matters as the Secretary considers appropriate.

“(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit, expand, or otherwise alter the authority of the Secretary to conduct military op-

erations, including clandestine operations, in the information environment, to authorize specific military operations, or to limit, expand, or otherwise alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.) or an authorization for use of military force that was in effect on the day before the date of the enactment of this Act [Dec. 20, 2019].

“(f) CROSS-FUNCTIONAL TEAM.—

“(1) ESTABLISHMENT.—The Principal Information Operations Advisor shall integrate the expertise in all elements of information operations and perspectives of appropriate organizations within the Office of the Secretary of Defense, Joint Staff, military departments, Defense Agencies, and combatant commands by establishing and maintaining a full-time cross-functional team composed of subject-matter experts selected from those organizations.

“(2) SELECTION AND ORGANIZATION.—The cross-functional team established under paragraph (1) shall be selected, organized, and managed in a manner consistent with section 911 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 111 note).

“(g) STRATEGY AND POSTURE REVIEW.—

“(1) STRATEGY AND POSTURE REVIEW REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense, acting through the Principal Information Operations Advisor under section 397 of title 10, United States Code (as added by subsection (a)) and the cross-functional team established under subsection (f)(1), shall—

“(A) develop or update, as appropriate, a strategy for operations in the information environment, including how such operations will be synchronized across the Department of Defense and the global, regional, and functional interests of the combatant commands;

“(B) conduct an information operations posture review, including an analysis of capability gaps that inhibit the Department’s ability to successfully execute the strategy developed or updated pursuant to subparagraph (A);

“(C) designate Information Operations Force Providers and Information Operations Joint Force Trainers for the Department of Defense;

“(D) develop and persistently manage a joint lexicon for terms related to information operations, including ‘information operations’, ‘information environment’, ‘operations in the information environment’, and ‘information related capabilities’; and

“(E) determine the collective set of combat capabilities that will be treated as part of operations in the information environment, including cyber warfare, space warfare, military information support operations, electronic warfare, public affairs, and civil affairs.

“(2) COORDINATION ON CERTAIN CYBER MATTERS.—For any matters in the strategy and posture review under paragraph (1) that involve or relate to Department of Defense cyber capabilities, the Principal Information Operations Advisor shall fully collaborate with the Principal Cyber Advisor to the Secretary of Defense.

“(3) ELEMENTS.—At a minimum, the strategy developed or updated pursuant to paragraph (1)(A) shall include the following:

“(A) The establishment of lines of effort, objectives, and tasks that are necessary to implement such strategy and eliminate the capability gaps identified under paragraph (1)(B).

“(B) In partnership with the Principal Cyber Advisor to the Secretary of Defense and in coordination with any other component or Department of Defense entity as selected by the Secretary of Defense, an evaluation of any organizational changes that may be required within the Office of the Secretary of Defense, including potential changes to Under Secretary or Assistant Secretary-level positions to comprehensively conduct oversight of policy development, capabilities, and other aspects of operations in the information environment as de-

¹ So in original. “Persons” probably should not be capitalized.

terminated pursuant to the information operations posture review under paragraph (1)(B).

“(C) An assessment of various models for operationalizing information operations, including the feasibility and advisability of establishing an Army Information Warfare Command.

“(D) A review of the role of information operations in combatant commander operational planning, the ability of combatant commanders to respond to hostile acts by adversaries, and the ability of combatant commanders to engage and build capacity with allies.

“(E) A review of the law, policies, and authorities relating to, and necessary for, the United States to conduct military operations, including clandestine military operations, in the information environment.

“(4) SUBMISSION TO CONGRESS.—Upon completion, the Secretary of Defense shall present the strategy for operations in the information environment and the information operations posture review under subparagraphs (A) and (B), respectively, of paragraph (1) to the Committees on Armed Services of the House of Representatives and the Senate.

“(h) REPORT.—

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall provide the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report for the structuring and manning of information operations capabilities and forces across the Department of Defense. The Secretary shall provide such Committees with quarterly updates on such plan.

“(2) ELEMENTS.—The plan required under paragraph (1) shall address the following:

“(A) How the Department of Defense will organize to develop a combined information operations strategy and posture review under subsection (g).

“(B) How the Department will fulfill the roles and responsibilities of the Principal Information Operations Advisor under section 397 of title 10, United States Code (as added by subsection (a)).

“(C) How the Department will establish the information operations cross-functional team under subsection (f)(1).

“(D) How the Department will utilize boards and working groups involving senior-level Department representatives on information operations.

“(E) Such other matters as the Secretary of Defense considers appropriate.

“(i) DEFINITIONS.—In this section:

“(1) The terms ‘foreign person’ [probably should be ‘foreign power’] and ‘United States person’ have the meanings given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

“(2) The term ‘hostilities’ has the same meaning as such term is used in the War Powers Resolution (50 U.S.C. 1541 et seq.).

“(3) The term ‘clandestine military operation in the information environment’ means an operation or activity, or associated preparatory actions, authorized by the President or the Secretary of Defense, that—

“(A) is marked by, held in, or conducted with secrecy, where the intent is that the operation or activity will not be apparent or acknowledged publicly; and

“(B) is to be carried out—

“(i) as part of a military operation plan approved by the President or the Secretary of Defense;

“(ii) to deter, safeguard, or defend against attacks or malicious influence activities against the United States, allies of the United States, and interests of the United States;

“(iii) in support of hostilities or military operations involving the United States armed forces; or

“(iv) in support of military operations short of hostilities and in areas where hostilities are not

occurring for the purpose of preparation of the environment, influence, force protection, and deterrence.”

CHAPTER 20—HUMANITARIAN AND OTHER ASSISTANCE

Sec.	
401.	Humanitarian and civic assistance provided in conjunction with military operations.
402.	Transportation of humanitarian relief supplies to foreign countries.
[403.	Repealed.]
404.	Foreign disaster assistance.
405.	Use of Department of Defense funds for United States share of costs of United Nations peacekeeping activities: limitation.
[406.	Renumbered.]
407.	Humanitarian demining assistance and stockpiled conventional munitions assistance: authority; limitations.
408.	Equipment and training of foreign personnel to assist in Department of Defense accounting for missing United States Government personnel.
409.	Center for Complex Operations.
[410.	Repealed.]

PRIOR PROVISIONS

Chapter was comprised of subchapter I, sections 401 to 404, and subchapter II, section 410, prior to amendment by Pub. L. 104-106, div. A, title V, § 571(c), Feb. 10, 1996, 110 Stat. 353, which struck out headings for subchapters I and II.

AMENDMENTS

2011—Pub. L. 112-81, div. A, title X, § 1092(b)(2), Dec. 31, 2011, 125 Stat. 1606, added item 407 and struck out former item 407 “Humanitarian demining assistance: authority; limitations”.

2008—Pub. L. 110-417, [div. A], title X, § 1031(b), Oct. 14, 2008, 122 Stat. 4590, added item 409.

Pub. L. 110-181, div. A, title XII, § 1207(b), Jan. 28, 2008, 122 Stat. 367, added item 408.

2006—Pub. L. 109-364, div. A, title XII, § 1203(b)(2), Oct. 17, 2006, 120 Stat. 2415, added item 407.

1996—Pub. L. 104-106, div. A, title X, § 1061(g)(2), title XIII, § 1301(b), Feb. 10, 1996, 110 Stat. 443, 473, which directed amendment of table of sections at beginning of subchapter I of this chapter by striking out item 403 and adding item 405, were executed by striking out item 403 “International peacekeeping activities” and adding item 405 in analysis for this chapter to reflect the probable intent of Congress and amendments by Pub. L. 104-106, § 571(c)(1), (2). See below.

Pub. L. 104-106, div. A, title V, § 571(c)(1), (2), Feb. 10, 1996, 110 Stat. 353, struck out subchapter analysis, consisting of items for subchapter I “Humanitarian Assistance” and subchapter II “Civil-Military Cooperation” and struck out subchapter I heading “HUMANITARIAN ASSISTANCE”.

1994—Pub. L. 103-337, div. A, title XIV, § 1412(b), Oct. 5, 1994, 108 Stat. 2913, added item 404.

1992—Pub. L. 102-484, div. A, title X, § 1081(b)(2), title XIII, § 1342(c)(2), Oct. 23, 1992, 106 Stat. 2516, 2558, added subchapter analysis, subchapter I heading, and item 403.

1987—Pub. L. 100-180, div. A, title III, § 332(b)(6), Dec. 4, 1987, 101 Stat. 1080, substituted “HUMANITARIAN AND OTHER ASSISTANCE” for “HUMANITARIAN AND CIVIC ASSISTANCE PROVIDED IN CONJUNCTION WITH MILITARY OPERATIONS” in chapter heading, “Humanitarian and civic assistance provided in conjunction with military operations” for “Armed forces participation in humanitarian and civic assistance activities” in item 401, and “Transportation of humanitarian relief supplies to foreign countries” for “Approval of Secretary of State” in item 402, and struck out items 403 “Payment of expenses”, 404 “An-