

Subsecs. (a) to (c) of section 1532 are not classified to the Code, and subsec. (d) of section 1532 amended section 1531(d) of Pub. L. 113-66, which is set out as a note under section 2302 of this title.

Section 1233 of the National Defense Authorization Act for Fiscal Year 2008, referred to in subsec. (c)(7), is section 1233 of Pub. L. 110-181, div. A, title XII, Jan. 28, 2008, 122 Stat. 393, which is not classified to the Code.

Section 1234 of the National Defense Authorization Act for Fiscal Year 2008, referred to in subsec. (c)(8), is section 1234 of Pub. L. 110-181, div. A, title XII, Jan. 28, 2008, 122 Stat. 394, which is not classified to the Code.

Section 1033 of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (c)(9), is section 1033 of Pub. L. 105-85, div. A, title X, Nov. 18, 1997, 111 Stat. 1881, which is not classified to the Code.

Section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note), referred to in subsec. (c)(10), is section 1004 of Pub. L. 101-510, div. A, title X, Nov. 5, 1990, 104 Stat. 1629, which was set out as a note under section 374 of this title, prior to repeal by Pub. L. 114-328, div. A, title X, § 1011(b), Dec. 23, 2016, 130 Stat. 2385. See section 284 of this title.

Section 1206 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, referred to in subsec. (c)(12), is section 1206 of Pub. L. 113-291, which is set out as a note under section 2282 of this title.

CODIFICATION

Text of section, as added by Pub. L. 114-328, is based on text of subsecs. (a) to (e) of section 1211 of Pub. L. 113-291, div. A, title XII, Dec. 19, 2014, 128 Stat. 3544, which was not classified to the Code.

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115-232 substituted “Sections 246, 251, 252, 253, 321,” for “Sections 311, 321, 331, 332, 333.”

2016—Subsec. (a). Pub. L. 114-328, § 1251(b)(6), which directed striking out “under the authorities in subsection (c)” after “submitted”, was executed by striking out “under the authorities specified in subsection (c)” after “submitted”, to reflect the probable intent of Congress.

Pub. L. 114-328, § 1251(b)(1)–(5), in heading, substituted “Annual Report Required” for “Biennial Report Required”, and, in text, substituted “Not later than January 31 of each year beginning in 2018, the Secretary of Defense” for “Not later than February 1 of each of 2016, 2018, and 2020, the Secretary of Defense”, “appropriate congressional committees” for “congressional defense committees”, “assistance” for “security assistance”, and “the fiscal year” for “the two fiscal years” and inserted “under the authorities in subsection (c)” after “Department of Defense”.

Subsec. (b)(1). Pub. L. 114-328, § 1251(c)(1), inserted “, duration,” after “purpose”.

Subsec. (b)(2). Pub. L. 114-328, § 1251(c)(2), substituted “The cost and expenditures” for “The cost”.

Subsec. (b)(4) to (6). Pub. L. 114-328, § 1251(c)(3), added pars. (4) to (6).

Subsec. (c)(1). Pub. L. 114-328, § 1246(d)(2)(A), which directed amendment of subsec. (c)(1) by inserting “341,” after “333,” was executed by making the insertion after “321,” to reflect the probable intent of Congress and the intervening amendment by Pub. L. 115-232. See 2018 Amendment note above.

Pub. L. 114-328, § 1251(d)(1), added par. (1) and struck out former par. (1) which read as follows: “Section 127d of title 10, United States Code, relating to authority to provide logistic support, supplies, and services to allied forces participating in a combined operation with the Armed Forces.”

Subsec. (c)(2), (3). Pub. L. 114-328, § 1251(d)(6), substituted “of this title” for “of title 10, United States Code”.

Subsec. (c)(4). Pub. L. 114-328, § 1251(d)(2), (3), (6), redesignated par. (6) as (4), substituted “of this title” for

“of title 10, United States Code”, and struck out former par. (4) which read as follows: “Section 2010 of title 10, United States Code, relating to authority to reimburse foreign troops for participation in combined exercises.”

Subsec. (c)(5). Pub. L. 114-328, § 1251(d)(2), (3), (6), redesignated par. (8) as (5), substituted “of this title” for “of title 10, United States Code”, and struck out former par. (5) which read as follows: “Section 2011 of title 10, United States Code, relating to authority to reimburse foreign troops for participation in Joint Combined Exercise Training.”

Subsec. (c)(6). Pub. L. 114-328, § 1251(d)(3), redesignated par. (9) as (6). Former par. (6) redesignated (4).

Subsec. (c)(7). Pub. L. 114-328, § 1251(d)(2), (3), redesignated par. (13) as (7) and struck out former par. (7) which read as follows: “Section 2282 of title 10, United States Code (as added by section 1205 of this Act), relating to authority to build the capacity of foreign military forces, or the predecessor authority to such section in section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3456).”

Subsec. (c)(8), (9). Pub. L. 114-328, § 1251(d)(3), redesignated pars. (14) and (15) as (8) and (9), respectively. Former pars. (8) and (9) redesignated (5) and (6), respectively.

Subsec. (c)(10). Pub. L. 114-328, § 1251(d)(2), (3), redesignated par. (16) as (10) and struck out former par. (10) which read as follows: “Section 1205 of the National Defense Authorization Act for Fiscal Year 2014 (32 U.S.C. 107 note), relating to authority for National Guard State Partnership program.”

Subsec. (c)(11), (12). Pub. L. 114-328, § 1251(d)(2), (4), added pars. (11) and (12) and struck out former pars. (11) and (12) which read as follows:

“(11) Section 1081 of the National Defense Authorization Act for Fiscal Year 2012 (10 U.S.C. 168 note), relating to the Ministry of Defense Advisors program.

“(12) Section 1207 of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 2151 note), relating to the Global Security Contingency Fund.”

Subsec. (c)(13). Pub. L. 114-328, § 1251(d)(5), redesignated par. (17) as (13). Former par. (13) redesignated (7).

Subsec. (c)(14) to (16). Pub. L. 114-328, § 1251(d)(3), redesignated pars. (14) to (16) as (8) to (10), respectively.

Subsec. (c)(17). Pub. L. 114-328, § 1251(d)(5), redesignated par. (17) as (13).

Subsec. (d). Pub. L. 114-328, § 1251(e), designated existing provisions as par. (1) and inserted heading, substituted “Except as provided in paragraph (2), if any information” for “If any information”, and added par. (2).

Subsec. (e). Pub. L. 114-328, § 1251(f), inserted “that may also include other sensitive information” after “annex”.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. A, title XII, § 1246(d)(2), Dec. 23, 2016, 130 Stat. 2521, provided that the amendment made by section 1246(d)(2)(A) is effective as of January 1, 2020.

CHAPTER 19—CYBER AND INFORMATION OPERATIONS MATTERS

Sec. 391.	Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors and certain other contractors.
392.	Executive agents for cyber test and training ranges.
393.	Reporting on penetrations of networks and information systems of certain contractors.
394.	Authorities concerning military cyber operations.
395.	Notification requirements for sensitive military cyber operations.
396.	Notification requirements for cyber weapons.
397.	Principal Information Operations Advisor.

AMENDMENTS

2019—Pub. L. 116-92, div. A, title XVI, § 1631(a)(2)(A), Dec. 20, 2019, 133 Stat. 1742, substituted “CYBER AND

INFORMATION OPERATIONS MATTERS” for “CYBER MATTERS” in chapter heading and added item 397.

2018—Pub. L. 115-232, div. A, title XVI, §1631(c)(2), Aug. 13, 2018, 132 Stat. 2123, added items 394 to 396.

2015—Pub. L. 114-92, div. A, title X, §1081(a)(4), title XVI, §1641(c)(2), Nov. 25, 2015, 129 Stat. 1001, 1116, substituted “Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors and certain other contractors” for “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 and contract requirements established pursuant to Defense Federal Acquisition Regulation Supplement clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, that is conducted in accordance with procedures established pursuant to subsection (b) and such contract requirements.

(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