

under what conditions the National Guard could respond to a cyber attack as a homeland defense activity under section 902 of such title.

“(2) Guidance promulgated regarding how units of the National Guard shall collaborate with relevant civil, law enforcement, and cybersecurity agencies when conducting a homeland defense activity under section 902 of title 32, United States Code.

“(c) UPDATE TO CERTAIN REGULATIONS AND GUIDANCE.—If the Secretary of Defense determines such is appropriate based on the evaluation required under subsection (a) and the review described in subsection (b), the Secretary shall update—

“(1) the regulations referred to in subsection (b)(1); and

“(2) the guidance referred to in subsection (b)(2).

“(d) UPDATE TO THE NATIONAL CYBER INCIDENT RESPONSE PLAN.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Homeland Security, in coordination with the Secretary of Defense, may update the National Cyber Incident Response Plan to address any changes made by the Secretary of Defense to the roles and responsibilities of the National Guard for the response to and recovery from significant cyber incidents.

“(e) JOINT BRIEFINGS.—Not later than 300 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Homeland Security shall jointly brief the congressional defense committees, the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives on the following:

“(1) The results of the evaluation required under subsection (a)(1), including the utilization of any input provided to the Secretary of Defense pursuant to subsection (a)(2).

“(2) Any updated regulations or guidance in accordance with subsection (c).

“(3) Any update by the Secretary of Homeland Security to the National Cyber Incident Response Plan pursuant to subsection (d).

“(4) How the Department of Defense, including the National Guard, and the Department of Homeland Security, including the Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency, will collaborate with each other and with relevant law enforcement, State governments, and other non-Federal entities when responding to and recovering from significant cyber incidents.

“(f) DEFINITION.—The term ‘significant cyber incident’ means a cyber incident that results, or several related cyber incidents that result, in demonstrable harm to—

“(1) the national security interests, foreign relations, or economy of the United States; or

“(2) the public confidence, civil liberties, or public health and safety of the American people.”

§ 902. Homeland defense activities: funds

The Secretary of Defense may provide funds to a Governor to employ National Guard units or members to conduct homeland defense activities that the Secretary determines to be necessary and appropriate for participation by the National Guard units or members, as the case may be.

(Added Pub. L. 108–375, div. A, title V, §512(a)(1), Oct. 28, 2004, 118 Stat. 1878; amended Pub. L. 109–364, div. A, title X, §1071(b)(1), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 115–232, div. A, title X, §1081(b), Aug. 13, 2018, 132 Stat. 1985.)

Editorial Notes

AMENDMENTS

2018—Pub. L. 115–232 substituted “the Secretary determines” for “the Secretary, determines”.

2006—Pub. L. 109–364 struck out “(a)” before “The Secretary”.

§ 903. Regulations

The Secretary of Defense shall prescribe regulations to implement this chapter.

(Added Pub. L. 108–375, div. A, title V, §512(a)(1), Oct. 28, 2004, 118 Stat. 1878.)

§ 904. Homeland defense duty

(a) FULL-TIME NATIONAL GUARD DUTY.—All duty performed under this chapter shall be considered to be full-time National Guard duty under section 502(f) of this title. Members of the National Guard performing full-time National Guard duty in the Active Guard and Reserve Program may support or execute homeland defense activities performed by the National Guard under this chapter.

(b) DURATION.—The period for which a member of the National Guard performs duty under this chapter shall be limited to 180 days. The Governor of the State may, with the concurrence of the Secretary of Defense, extend the period one time for an additional 90 days to meet extraordinary circumstances.

(c) RELATIONSHIP TO REQUIRED TRAINING.—A member of the National Guard performing duty under this chapter shall, in addition to performing such duty, participate in the training required under section 502(a) of this title. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing the duty under this chapter. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

(d) READINESS.—To ensure that the use of units and personnel of the National Guard of a State for homeland defense activities does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the homeland defense activities that units and personnel of the National Guard of a State may perform:

(1) The performance of the activities is not to affect adversely the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

(2) The performance of the activities is not to degrade the military skills of the members of the National Guard performing those activities.

(Added Pub. L. 108–375, div. A, title V, §512(a)(1), Oct. 28, 2004, 118 Stat. 1878.)

§ 905. Funding assistance

In the case of any homeland defense activity for which the Secretary of Defense determines under section 902 of this title that participation of units or members of the National Guard of a State is necessary and appropriate, the Secretary may provide funds to that State in an amount that the Secretary determines is appropriate for the following costs of the participa-

tion in that activity from funds available to the Department for related purposes:

- (1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses of personnel of the National Guard of that State.
- (2) The operation and maintenance of the equipment and facilities of the National Guard of that State.
- (3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State.

(Added Pub. L. 108-375, div. A, title V, §512(a)(1), Oct. 28, 2004, 118 Stat. 1879.)

§ 906. Requests for funding assistance

A Governor of a State may request funding assistance for the homeland defense activities of the National Guard of that State from the Secretary of Defense. Any such request shall include the following:

- (1) The specific intended homeland defense activities of the National Guard of that State.
- (2) An explanation of why participation of National Guard units or members, as the case may be, in the homeland defense activities is necessary and appropriate.
- (3) A certification that homeland defense activities are to be conducted at a time when the personnel involved are not in Federal service.

(Added Pub. L. 108-375, div. A, title V, §512(a)(1), Oct. 28, 2004, 118 Stat. 1879.)

§ 907. Relationship to State duty

Nothing in this chapter shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform functions authorized to be performed by the National Guard by the laws of the State concerned.

(Added Pub. L. 108-375, div. A, title V, §512(a)(1), Oct. 28, 2004, 118 Stat. 1879.)

§ 908. Annual report

(a) REQUIREMENT FOR REPORT.—After the end of any fiscal year during which any assistance was provided or activities were carried out under this chapter, the Secretary of Defense shall submit to the congressional defense committees a report regarding any assistance provided and activities carried out under this chapter during that fiscal year. The report for a fiscal year shall be submitted not later than March 31 of the year following the year in which such fiscal year ended.

(b) CONTENT.—The report for a fiscal year shall include the following matters:

- (1) The numbers of members of the National Guard excluded under subsection (i)(13) of section 115 of title 10 from being counted for the purpose of end-strengths authorized pursuant to subsection (a)(1) of such section.
- (2) A description of the homeland defense activities conducted with funds provided under this chapter.
- (3) An accounting of the amount of the funds provided to each State.
- (4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform homeland defense activities under this chapter.

(Added Pub. L. 108-375, div. A, title V, §512(a)(1), Oct. 28, 2004, 118 Stat. 1879; amended Pub. L. 109-364, div. A, title X, §1071(b)(2), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 112-81, div. A, title X, §1065(a), Dec. 31, 2011, 125 Stat. 1588.)

Editorial Notes

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-81 substituted “After the end of any fiscal year during which any assistance was provided or activities were carried out under this chapter,” for “After the end of each fiscal year,”.

2006—Subsec. (b)(1). Pub. L. 109-364 substituted “(i)(13)” for “(i)”.