

the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a certification that—

“(1) the Secretary has determined that such tour is in the national security interest of the United States, including the justifications for such determination; and

“(2) the Secretary will not share any technical data relating to the covered site with the foreign nationals.

“(b) TIMING.—The Secretary may not conduct a tour described in subsection (a) until a period of 45 days has elapsed following the date on which the Secretary submits the certification for that tour under such subsection.

“(c) CONSTRUCTION WITH OTHER REQUIREMENTS.—Nothing in this section shall be construed to supersede or otherwise affect section 130h of title 10, United States Code.

“(d) COVERED SITE.—In this section, the term ‘covered site’ means any of the following:

“(1) The combat information center of a naval ship equipped with the Aegis ballistic missile defense system.

“(2) An Aegis Ashore site.

“(3) A terminal high altitude area defense battery.

“(4) A ground-based midcourse defense interceptor silo.”

§ 130i. Protection of certain facilities and assets from unmanned aircraft

(a) AUTHORITY.—Notwithstanding section 46502 of title 49, or any provision of title 18, the Secretary of Defense may take, and may authorize members of the armed forces and officers and civilian employees of the Department of Defense with assigned duties that include safety, security, or protection of personnel, facilities, or assets, to take, such actions described in subsection (b)(1) that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset.

(b) ACTIONS DESCRIBED.—(1) The actions described in this paragraph are the following:

(A) Detect, identify, monitor, and track the unmanned aircraft system or unmanned aircraft, without prior consent, including by means of intercept or other access of a wire communication, an oral communication, or an electronic communication used to control the unmanned aircraft system or unmanned aircraft.

(B) Warn the operator of the unmanned aircraft system or unmanned aircraft, including by passive or active, and direct or indirect physical, electronic, radio, and electromagnetic means.

(C) Disrupt control of the unmanned aircraft system or unmanned aircraft, without prior consent, including by disabling the unmanned aircraft system or unmanned aircraft by intercepting, interfering, or causing interference with wire, oral, electronic, or radio communications used to control the unmanned aircraft system or unmanned aircraft.

(D) Seize or exercise control of the unmanned aircraft system or unmanned aircraft.

(E) Seize or otherwise confiscate the unmanned aircraft system or unmanned aircraft.

(F) Use reasonable force to disable, damage, or destroy the unmanned aircraft system or unmanned aircraft.

(2) The Secretary of Defense shall develop the actions described in paragraph (1) in coordination with the Secretary of Transportation.

(c) FORFEITURE.—Any unmanned aircraft system or unmanned aircraft described in subsection (a) that is seized by the Secretary of Defense is subject to forfeiture to the United States.

(d) REGULATIONS AND GUIDANCE.—(1) The Secretary of Defense and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary to carry out this section.

(2) (A) The Secretary of Defense and the Secretary of Transportation shall coordinate in the development of guidance under paragraph (1).

(B) The Secretary of Defense shall coordinate with the Secretary of Transportation and the Administrator of the Federal Aviation Administration before issuing any guidance or otherwise implementing this section if such guidance or implementation might affect aviation safety, civilian aviation and aerospace operations, aircraft airworthiness, or the use of airspace.

(e) PRIVACY PROTECTION.—The regulations prescribed or guidance issued under subsection (d) shall ensure that—

(1) the interception or acquisition of, or access to, communications to or from an unmanned aircraft system under this section is conducted in a manner consistent with the fourth amendment to the Constitution and applicable provisions of Federal law;

(2) communications to or from an unmanned aircraft system are intercepted, acquired, or accessed only to the extent necessary to support a function of the Department of Defense;

(3) records of such communications are not maintained for more than 180 days unless the Secretary of Defense determines that maintenance of such records—

(A) is necessary to support one or more functions of the Department of Defense; or

(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable law or regulation; and

(4) such communications are not disclosed outside the Department of Defense unless the disclosure—

(A) would fulfill a function of the Department of Defense;

(B) would support a civilian law enforcement agency or the enforcement activities of a regulatory agency of the Federal Government in connection with a criminal or civil investigation of, or any regulatory action with regard to, an action described in subsection (b)(1); or

(C) is otherwise required by law or regulation.

(f) BUDGET.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for each fiscal year after fiscal year 2018, a consolidated funding display that identifies the funding source for the actions described in subsection (b)(1) within the Department of Defense. The funding display shall be in unclassified form, but may contain a classified annex.

(g) SEMIANNUAL BRIEFINGS.—(1) On a semiannual basis during the five-year period begin-

ning March 1, 2018, the Secretary of Defense and the Secretary of Transportation, shall jointly provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section. Such briefings shall include—

(A) policies, programs, and procedures to mitigate or eliminate impacts of such activities to the National Airspace System;

(B) a description of instances where actions described in subsection (b)(1) have been taken;

(C) how the Secretaries have informed the public as to the possible use of authorities under this section; and

(D) how the Secretaries have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.

(2) Each briefing under paragraph (1) shall be in unclassified form, but may be accompanied by an additional classified briefing.

(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to—

(1) vest in the Secretary of Defense any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 49; and

(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary of Defense under this title.

(i) PARTIAL TERMINATION.—(1) Except as provided by paragraph (2), the authority to carry out this section with respect to the covered facilities or assets specified in clauses (iv) through (viii) of subsection (j)(3)(C) shall terminate on December 31, 2023.

(2) The President may extend by 180 days the termination date specified in paragraph (1) if before November 15, 2023, the President certifies to Congress that such extension is in the national security interests of the United States.

(j) DEFINITIONS.—In this section:

(1) The term “appropriate congressional committees” means—

(A) the congressional defense committees;

(B) the Select Committee on Intelligence,

the Committee on the Judiciary, and the

Committee on Commerce, Science, and

Transportation of the Senate; and

(C) the Permanent Select Committee on

Intelligence, the Committee on the Judici

ary, and the Committee on Transportation

and Infrastructure of the House of Rep

resentatives.

(2) The term “budget”, with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(3) The term “covered facility or asset” means any facility or asset that—

(A) is identified by the Secretary of Defense, in consultation with the Secretary of Transportation with respect to potentially impacted airspace, through a risk-based assessment for purposes of this section;

(B) is located in the United States (including the territories and possessions of the United States); and

(C) directly relates to the missions of the Department of Defense pertaining to—

(i) nuclear deterrence, including with respect to nuclear command and control, integrated tactical warning and attack assessment, and continuity of government;

(ii) missile defense;

(iii) national security space;

(iv) assistance in protecting the President or the Vice President (or other officer immediately next in order of succession to the office of the President) pursuant to the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note);

(v) air defense of the United States, including air sovereignty, ground-based air defense, and the National Capital Region integrated air defense system;

(vi) combat support agencies (as defined in paragraphs (1) through (4) of section 193(f) of this title);

(vii) special operations activities specified in paragraphs (1) through (9) of section 167(k) of this title;

(viii) production, storage, transportation, or decommissioning of high-yield explosive munitions, by the Department; or

(ix) a Major Range and Test Facility Base (as defined in sections¹ 4173(i) of this title).

(4) The term “defense budget materials”, with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(5) The terms “electronic communication”, “intercept”, “oral communication”, and “wire communication” have the meanings given those terms in section 2510 of title 18.

(6) The terms “unmanned aircraft” and “unmanned aircraft system” have the meanings given those terms in section 44801 of title 49.

(Added Pub. L. 114-328, div. A, title XVI, § 1697(a), Dec. 23, 2016, 130 Stat. 2639; amended Pub. L. 115-91, div. A, title XVI, § 1692, Dec. 12, 2017, 131 Stat. 1788; Pub. L. 116-92, div. A, title XVI, § 1694, title XVII, § 1731(a)(6), Dec. 20, 2019, 133 Stat. 1791, 1812; Pub. L. 116-283, div. A, title X, § 1081(a)(8), title XVIII, § 1845(c)(4), Jan. 1, 2021, 134 Stat. 3871, 4247.)

Editorial Notes

REFERENCES IN TEXT

The Presidential Protection Assistance Act of 1976, referred to in subsec. (j)(3)(C)(iv), is Pub. L. 94-524, Oct. 17, 1976, 90 Stat. 2475, which enacted and amended provisions set out as notes under section 3056 of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2021—Subsec. (i)(1). Pub. L. 116-283, § 1081(a)(8)(A), substituted “of subsection (j)(3)(C) shall” for “of subsection (j)(3)(C) shall”, resulting in no change in text. See 2019 Amendment notes and Coordination of Amendments by Pub. L. 116-92 note below.

Subsec. (j)(3)(C)(ix). Pub. L. 116-283, § 1845(c)(4), substituted “sections 4173(i)” for “section 196(i)”.

Subsec. (j)(6). Pub. L. 116-283, § 1081(a)(8)(B), inserted a period at end.

¹ So in original. Probably should be “section”.

2019—Subsec. (i). Pub. L. 116–92, §1694(a), substituted “2023” for “2020” in two places.

Subsec. (i)(1). Pub. L. 116–92, §1731(a)(6)(A), inserted “(C)” after “subsection (j)(3)”.

Pub. L. 116–92, §1694(b)(1), which directed substitution of “of subsection (j)(3)(C)” for “of subsection (j)(3)”, resulted in no change in text because of prior execution of amendment by Pub. L. 116–92, §1731(a)(6)(A). See Amendment note above and Coordination of Amendments by Pub. L. 116–92 note below.

Subsec. (j)(6). Pub. L. 116–92, §1731(a)(6)(B), substituted “44802” for “40101”.

Pub. L. 116–92, §1694(b)(2), substituted “in section 44801 of title 49” for “in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 44802 note).”

2017—Pub. L. 115–91 amended section generally. Prior to amendment, section related to protection of certain facilities and assets from unmanned aircraft and consisted of provisions relating to authority of Secretary of Defense, authorized actions, forfeiture, regulations, and definitions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1845(c)(4) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

ASSESSMENT AND STRATEGY FOR FIELDING CAPABILITIES TO COUNTER THREATS POSED BY UNMANNED AERIAL SYSTEM SWARMS

Pub. L. 117–263, div. A, title I, §162, Dec. 23, 2022, 136 Stat. 2462, provided that:

“(a) ASSESSMENT, ANALYSIS, AND REVIEW.—The Secretary of Defense shall conduct—

“(1) an assessment of the threats posed by unmanned aerial system swarms and unmanned aerial systems with swarm capabilities to installations and deployed Armed Forces;

“(2) an analysis of the use or potential use of unmanned aerial system swarms by adversaries, including the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of North Korea, and non-state actors;

“(3) an analysis of the national security implications of swarming technologies such as autonomous intelligence and machine learning;

“(4) a review of the capabilities used by the Department of Defense to counter threats posed by unmanned aerial systems and an assessment of the effectiveness of such capabilities at countering the threat of unmanned aerial system swarms; and

“(5) an overview of the efforts of the Department of Defense to develop and field test technologies that offer scalable, modular, and rapidly deployable capabilities with the ability to counter unmanned aerial system swarms.

“(b) STRATEGY DEVELOPMENT AND IMPLEMENTATION REQUIRED.—

“(1) IN GENERAL.—The Secretary of Defense shall develop and implement a strategy to field capabilities to counter threats posed by unmanned aerial system swarms.

“(2) ELEMENTS.—The strategy required by paragraph (1) shall include the following:

“(A) The development of a comprehensive definition of ‘unmanned aerial system swarm’.

“(B) A plan to establish and incorporate requirements for the development, testing, and fielding of technologies and capabilities to counter unmanned aerial system swarms.

“(C) A plan to acquire and field adequate capabilities to counter unmanned aerial system swarms in defense of the Armed Forces, infrastructure, and

other assets of the United States across land, air, and maritime domains.

“(D) An estimate of the resources needed by each Armed Force to implement the strategy.

“(E) An analysis, determination, and prioritization of legislative action required to ensure the Department of Defense has the ability to counter the threats posed by unmanned aerial system swarms.

“(F) Such other matters as the Secretary determines to be relevant to the strategy.

“(3) INCORPORATION INTO EXISTING STRATEGY.—The Secretary of Defense may incorporate the strategy required by paragraph (1) into a comprehensive strategy of the Department of Defense to counter the threat of unmanned aerial systems.

“(c) INFORMATION TO CONGRESS.—Not later than 270 days after the date of the enactment of this Act [Dec. 23, 2022], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on—

“(1) the findings of the Secretary under subsection (a); and

“(2) the strategy developed and implemented by the Secretary under subsection (b).”

COORDINATION OF AMENDMENTS BY PUB. L. 116–92

Amendments to this section by section 1731 of Pub. L. 116–92 to be treated as having been enacted immediately before amendments by other provisions of Pub. L. 116–92, see section 1731(f) of Pub. L. 116–92, set out as a Coordination of Certain Sections of an Act With Other Provisions of That Act note under section 101 of this title.

[§§ 130j, 130k. Renumbered §§ 395, 396]

CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

Sec.

- 131. Office of the Secretary of Defense.
- 132. Deputy Secretary of Defense.
- [132a, 133. Repealed.]
- 133a. Under Secretary of Defense for Research and Engineering.
- 133b. Under Secretary of Defense for Acquisition and Sustainment.
- 134. Under Secretary of Defense for Policy.
- [134a, 134b. Repealed.]
- 135. Under Secretary of Defense (Comptroller).
- 136. Under Secretary of Defense for Personnel and Readiness.
- [136a. Repealed.]
- 137. Under Secretary of Defense for Intelligence and Security.
- 137a. Deputy Under Secretaries of Defense.
- 138. Assistant Secretaries of Defense.
- [138a to 138d. Repealed.]
- 139. Director of Operational Test and Evaluation.
- 139a. Director of Cost Assessment and Program Evaluation.
- 139b. Secretariat for Special Operations; Special Operations Policy and Oversight Council.
- [139c. Repealed.]
- [139d, 139e. Renumbered.]
- 140. General Counsel.
- [140a to 140c. Renumbered.]
- 141. Inspector General.
- 142. Chief Information Officer.
- 143. Office of the Secretary of Defense personnel: limitation.
- 144. Director of Small Business Programs.
- 145. Principal Advisor on Countering Weapons of Mass Destruction.
- [146. Renumbered.]
- 147. Chief Diversity Officer.