

§ 1404. Repealed. Pub. L. 114–4, title V, § 566, Mar. 4, 2015, 129 Stat. 73

Section, Pub. L. 110–161, div. E, title VI, § 605, Dec. 26, 2007, 121 Stat. 2096, related to the port of entry technology demonstration program.

§ 1405. Authorization of appropriations

(a) In general

In addition to any funds otherwise available, there are authorized to be appropriated such sums as may be necessary to carry out this chapter for fiscal years 2009 through 2013.

(b) International agreements

Funds authorized to be appropriated under this chapter may be used for the implementation of projects described in the Declaration on Embracing Technology and Cooperation to Promote the Secure and Efficient Flow of People and Commerce across our Shared Border between the United States and Mexico, agreed to March 22, 2002, Monterrey, Mexico (commonly known as the Border Partnership Action Plan) or the Smart Border Declaration between the United States and Canada, agreed to December 12, 2001, Ottawa, Canada that are consistent with the provisions of this chapter.

(Pub. L. 110–161, div. E, title VI, § 606, Dec. 26, 2007, 121 Stat. 2097.)

CHAPTER 6—CYBERSECURITY

SUBCHAPTER I—CYBERSECURITY INFORMATION SHARING

- Sec.
- 1500. National Cyber Director.
- 1501. Definitions.
- 1502. Sharing of information by the Federal Government.
- 1503. Authorizations for preventing, detecting, analyzing, and mitigating cybersecurity threats.
- 1504. Sharing of cyber threat indicators and defensive measures with the Federal Government.
- 1505. Protection from liability.
- 1506. Oversight of government activities.
- 1507. Construction and preemption.
- 1508. Report on cybersecurity threats.
- 1509. Exception to limitation on authority of Secretary of Defense to disseminate certain information.
- 1510. Effective period.

SUBCHAPTER II—FEDERAL CYBERSECURITY ENHANCEMENT

- 1521. Definitions.
- 1522. Advanced internal defenses.
- 1523. Federal cybersecurity requirements.
- 1524. Assessment; reports.
- 1525. Termination.
- 1526. Inventory of cryptographic systems; migration to post-quantum cryptography.

SUBCHAPTER III—OTHER CYBER MATTERS

- 1531. Apprehension and prosecution of international cyber criminals.
- 1532. Enhancement of emergency services.
- 1533. Improving cybersecurity in the health care industry.
- 1534. Cybercrime.

Statutory Notes and Related Subsidiaries

LIMITATION RELATING TO ESTABLISHMENT OR SUPPORT OF CYBERSECURITY UNIT WITH THE RUSSIAN FEDERATION

Pub. L. 116–92, div. E, title LXVII, § 6701, Dec. 20, 2019, 133 Stat. 2221, provided that:

“(a) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term ‘appropriate congressional committees’ means—

“(1) the congressional intelligence committees;

“(2) the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

“(3) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

“(b) **LIMITATION.**—

“(1) **IN GENERAL.**—No amount may be expended by the Federal Government, other than the Department of Defense, to enter into or implement any bilateral agreement between the United States and the Russian Federation regarding cybersecurity, including the establishment or support of any cybersecurity unit, unless, at least 30 days prior to the conclusion of any such agreement, the Director of National Intelligence submits to the appropriate congressional committees a report on such agreement that includes the elements required by subsection (c).

“(2) **DEPARTMENT OF DEFENSE AGREEMENTS.**—Any agreement between the Department of Defense and the Russian Federation regarding cybersecurity shall be conducted in accordance with section 1232 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328) [130 Stat. 2488], as amended by section 1231 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91) [131 Stat. 1657].

“(c) **ELEMENTS.**—If the Director submits a report under subsection (b) with respect to an agreement, such report shall include a discussion of each of the following:

“(1) The purpose of the agreement.

“(2) The nature of any intelligence to be shared pursuant to the agreement.

“(3) The expected value to national security resulting from the implementation of the agreement.

“(4) Such counterintelligence concerns associated with the agreement as the Director may have and such measures as the Director expects to be taken to mitigate such concerns.

“(d) **RULE OF CONSTRUCTION.**—This section shall not be construed to affect any existing authority of the Director of National Intelligence, the Director of the Central Intelligence Agency, or another head of an element of the intelligence community, to share or receive foreign intelligence on a case-by-case basis.”

[For definitions of “congressional intelligence committees” and “intelligence community” as used in section 6701 of div. E of Pub. L. 116–92, set out above, see section 5003 of div. E of Pub. L. 116–92, set out as a note under section 3003 of Title 50, War and National Defense.]

Executive Documents

EX. ORD. NO. 13800. STRENGTHENING THE CYBERSECURITY OF FEDERAL NETWORKS AND CRITICAL INFRASTRUCTURE

Ex. Ord. No. 13800, May 11, 2017, 82 F.R. 22391, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to protect American innovation and values, it is hereby ordered as follows:

SECTION 1. *Cybersecurity of Federal Networks.*

(a) **Policy.** The executive branch operates its information technology (IT) on behalf of the American people. Its IT and data should be secured responsibly using all United States Government capabilities. The President

will hold heads of executive departments and agencies (agency heads) accountable for managing cybersecurity risk to their enterprises. In addition, because risk management decisions made by agency heads can affect the risk to the executive branch as a whole, and to national security, it is also the policy of the United States to manage cybersecurity risk as an executive branch enterprise.

(b) *Findings.*

(i) Cybersecurity risk management comprises the full range of activities undertaken to protect IT and data from unauthorized access and other cyber threats, to maintain awareness of cyber threats, to detect anomalies and incidents adversely affecting IT and data, and to mitigate the impact of, respond to, and recover from incidents. Information sharing facilitates and supports all of these activities.

(ii) The executive branch has for too long accepted antiquated and difficult-to-defend IT.

(iii) Effective risk management involves more than just protecting IT and data currently in place. It also requires planning so that maintenance, improvements, and modernization occur in a coordinated way and with appropriate regularity.

(iv) Known but unmitigated vulnerabilities are among the highest cybersecurity risks faced by executive departments and agencies (agencies). Known vulnerabilities include using operating systems or hardware beyond the vendor's support lifecycle, declining to implement a vendor's security patch, or failing to execute security-specific configuration guidance.

(v) Effective risk management requires agency heads to lead integrated teams of senior executives with expertise in IT, security, budgeting, acquisition, law, privacy, and human resources.

(c) *Risk Management.*

(i) Agency heads will be held accountable by the President for implementing risk management measures commensurate with the risk and magnitude of the harm that would result from unauthorized access, use, disclosure, disruption, modification, or destruction of IT and data. They will also be held accountable by the President for ensuring that cybersecurity risk management processes are aligned with strategic, operational, and budgetary planning processes, in accordance with chapter 35, subchapter II of title 44, United States Code.

(ii) Effective immediately, each agency head shall use The Framework for Improving Critical Infrastructure Cybersecurity (the Framework) developed by the National Institute of Standards and Technology, or any successor document, to manage the agency's cybersecurity risk. Each agency head shall provide a risk management report to the Secretary of Homeland Security and the Director of the Office of Management and Budget (OMB) within 90 days of the date of this order. The risk management report shall:

(A) document the risk mitigation and acceptance choices made by each agency head as of the date of this order, including:

(1) the strategic, operational, and budgetary considerations that informed those choices; and

(2) any accepted risk, including from unmitigated vulnerabilities; and

(B) describe the agency's action plan to implement the Framework.

(iii) The Secretary of Homeland Security and the Director of OMB, consistent with chapter 35, subchapter II of title 44, United States Code, shall jointly assess each agency's risk management report to determine whether the risk mitigation and acceptance choices set forth in the reports are appropriate and sufficient to manage the cybersecurity risk to the executive branch enterprise in the aggregate (the determination).

(iv) The Director of OMB, in coordination with the Secretary of Homeland Security, with appropriate support from the Secretary of Commerce and the Administrator of General Services, and within 60 days of receipt of the agency risk management reports outlined in subsection (c)(ii) of this section, shall submit to the President, through the Assistant to the President for Homeland Security and Counterterrorism, the following:

(A) the determination; and

(B) a plan to:

(1) adequately protect the executive branch enterprise, should the determination identify insufficiencies;

(2) address immediate unmet budgetary needs necessary to manage risk to the executive branch enterprise;

(3) establish a regular process for reassessing and, if appropriate, reissuing the determination, and addressing future, recurring unmet budgetary needs necessary to manage risk to the executive branch enterprise;

(4) clarify, reconcile, and reissue, as necessary and to the extent permitted by law, all policies, standards, and guidelines issued by any agency in furtherance of chapter 35, subchapter II of title 44, United States Code, and, as necessary and to the extent permitted by law, issue policies, standards, and guidelines in furtherance of this order; and

(5) align these policies, standards, and guidelines with the Framework.

(v) The agency risk management reports described in subsection (c)(ii) of this section and the determination and plan described in subsections (c)(iii) and (iv) of this section may be classified in full or in part, as appropriate.

(vi) Effective immediately, it is the policy of the executive branch to build and maintain a modern, secure, and more resilient executive branch IT architecture.

(A) Agency heads shall show preference in their procurement for shared IT services, to the extent permitted by law, including email, cloud, and cybersecurity services.

(B) The Director of the American Technology Council shall coordinate a report to the President from the Secretary of Homeland Security, the Director of OMB, and the Administrator of General Services, in consultation with the Secretary of Commerce, as appropriate, regarding modernization of Federal IT. The report shall:

(1) be completed within 90 days of the date of this order; and

(2) describe the legal, policy, and budgetary considerations relevant to—as well as the technical feasibility and cost effectiveness, including timelines and milestones, of—transitioning all agencies, or a subset of agencies, to:

(aa) one or more consolidated network architectures; and

(bb) shared IT services, including email, cloud, and cybersecurity services.

(C) The report described in subsection (c)(vi)(B) of this section shall assess the effects of transitioning all agencies, or a subset of agencies, to shared IT services with respect to cybersecurity, including by making recommendations to ensure consistency with [former] section 227 [now 2209] of the Homeland Security Act ([former] 6 U.S.C. 148) [now 6 U.S.C. 659] and compliance with policies and practices issued in accordance with section 3553 of title 44, United States Code. All agency heads shall supply such information concerning their current IT architectures and plans as is necessary to complete this report on time.

(vii) For any National Security System, as defined in section 3552(b)(6) of title 44, United States Code, the Secretary of Defense and the Director of National Intelligence, rather than the Secretary of Homeland Security and the Director of OMB, shall implement this order to the maximum extent feasible and appropriate. The Secretary of Defense and the Director of National Intelligence shall provide a report to the Assistant to the President for National Security Affairs and the Assistant to the President for Homeland Security and Counterterrorism describing their implementation of subsection (c) of this section within 150 days of the date of this order. The report described in this subsection shall include a justification for any deviation from the requirements of subsection (c), and may be classified in full or in part, as appropriate.

SEC. 2. Cybersecurity of Critical Infrastructure.

(a) *Policy.* It is the policy of the executive branch to use its authorities and capabilities to support the cybersecurity risk management efforts of the owners and operators of the Nation's critical infrastructure (as defined in section 5195c(e) of title 42, United States Code) (critical infrastructure entities), as appropriate.

(b) *Support to Critical Infrastructure at Greatest Risk.* The Secretary of Homeland Security, in coordination with the Secretary of Defense, the Attorney General, the Director of National Intelligence, the Director of the Federal Bureau of Investigation, the heads of appropriate sector-specific agencies, as defined in Presidential Policy Directive 21 of February 12, 2013 (Critical Infrastructure Security and Resilience) (sector-specific agencies), and all other appropriate agency heads, as identified by the Secretary of Homeland Security, shall:

(i) identify authorities and capabilities that agencies could employ to support the cybersecurity efforts of critical infrastructure entities identified pursuant to section 9 of Executive Order 13636 of February 12, 2013 (Improving Critical Infrastructure Cybersecurity), to be at greatest risk of attacks that could reasonably result in catastrophic regional or national effects on public health or safety, economic security, or national security (section 9 entities);

(ii) engage section 9 entities and solicit input as appropriate to evaluate whether and how the authorities and capabilities identified pursuant to subsection (b)(i) of this section might be employed to support cybersecurity risk management efforts and any obstacles to doing so;

(iii) provide a report to the President, which may be classified in full or in part, as appropriate, through the Assistant to the President for Homeland Security and Counterterrorism, within 180 days of the date of this order, that includes the following:

(A) the authorities and capabilities identified pursuant to subsection (b)(i) of this section;

(B) the results of the engagement and determination required pursuant to subsection (b)(ii) of this section; and

(C) findings and recommendations for better supporting the cybersecurity risk management efforts of section 9 entities; and

(iv) provide an updated report to the President on an annual basis thereafter.

(c) *Supporting Transparency in the Marketplace.* The Secretary of Homeland Security, in coordination with the Secretary of Commerce, shall provide a report to the President, through the Assistant to the President for Homeland Security and Counterterrorism, that examines the sufficiency of existing Federal policies and practices to promote appropriate market transparency of cybersecurity risk management practices by critical infrastructure entities, with a focus on publicly traded critical infrastructure entities, within 90 days of the date of this order.

(d) *Resilience Against Botnets and Other Automated, Distributed Threats.* The Secretary of Commerce and the Secretary of Homeland Security shall jointly lead an open and transparent process to identify and promote action by appropriate stakeholders to improve the resilience of the internet and communications ecosystem and to encourage collaboration with the goal of dramatically reducing threats perpetrated by automated and distributed attacks (e.g., botnets). The Secretary of Commerce and the Secretary of Homeland Security shall consult with the Secretary of Defense, the Attorney General, the Director of the Federal Bureau of Investigation, the heads of sector-specific agencies, the Chairs of the Federal Communications Commission and Federal Trade Commission, other interested agency heads, and appropriate stakeholders in carrying out this subsection. Within 240 days of the date of this order, the Secretary of Commerce and the Secretary of Homeland Security shall make publicly available a preliminary report on this effort. Within 1 year of the date of this order, the Secretaries shall submit a final version of this report to the President.

(e) *Assessment of Electricity Disruption Incident Response Capabilities.* The Secretary of Energy and the Secretary of Homeland Security, in consultation with the Director of National Intelligence, with State, local, tribal, and territorial governments, and with others as appropriate, shall jointly assess:

(i) the potential scope and duration of a prolonged power outage associated with a significant cyber incident, as defined in Presidential Policy Directive 41 of July 26, 2016 (United States Cyber Incident Coordination), against the United States electric subsector;

(ii) the readiness of the United States to manage the consequences of such an incident; and

(iii) any gaps or shortcomings in assets or capabilities required to mitigate the consequences of such an incident.

The assessment shall be provided to the President, through the Assistant to the President for Homeland Security and Counterterrorism, within 90 days of the date of this order, and may be classified in full or in part, as appropriate.

(f) *Department of Defense Warfighting Capabilities and Industrial Base.* Within 90 days of the date of this order, the Secretary of Defense, the Secretary of Homeland Security, and the Director of the Federal Bureau of Investigation, in coordination with the Director of National Intelligence, shall provide a report to the President, through the Assistant to the President for National Security Affairs and the Assistant to the President for Homeland Security and Counterterrorism, on cybersecurity risks facing the defense industrial base, including its supply chain, and United States military platforms, systems, networks, and capabilities, and recommendations for mitigating these risks. The report may be classified in full or in part, as appropriate.

SEC. 3. Cybersecurity for the Nation.

(a) *Policy.* To ensure that the internet remains valuable for future generations, it is the policy of the executive branch to promote an open, interoperable, reliable, and secure internet that fosters efficiency, innovation, communication, and economic prosperity, while respecting privacy and guarding against disruption, fraud, and theft. Further, the United States seeks to support the growth and sustainment of a workforce that is skilled in cybersecurity and related fields as the foundation for achieving our objectives in cyberspace.

(b) *Deterrence and Protection.* Within 90 days of the date of this order, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, and the United States Trade Representative, in coordination with the Director of National Intelligence, shall jointly submit a report to the President, through the Assistant to the President for National Security Affairs and the Assistant to the President for Homeland Security and Counterterrorism, on the Nation's strategic options for deterring adversaries and better protecting the American people from cyber threats.

(c) *International Cooperation.* As a highly connected nation, the United States is especially dependent on a globally secure and resilient internet and must work with allies and other partners toward maintaining the policy set forth in this section. Within 45 days of the date of this order, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Homeland Security, in coordination with the Attorney General and the Director of the Federal Bureau of Investigation, shall submit reports to the President on their international cybersecurity priorities, including those concerning investigation, attribution, cyber threat information sharing, response, capacity building, and cooperation. Within 90 days of the submission of the reports, and in coordination with the agency heads listed in this subsection, and any other agency heads as appropriate, the Secretary of State shall provide a report to the President, through the Assistant to the President for Homeland Security and Counterterrorism, documenting an engagement strategy for international cooperation in cybersecurity.

(d) *Workforce Development.* In order to ensure that the United States maintains a long-term cybersecurity advantage:

(i) The Secretary of Commerce and the Secretary of Homeland Security, in consultation with the Secretary of Defense, the Secretary of Labor, the Secretary of Education, the Director of the Office of Personnel Management, and other agencies identified jointly by the Secretary of Commerce and the Secretary of Homeland Security, shall:

(A) jointly assess the scope and sufficiency of efforts to educate and train the American cybersecurity workforce of the future, including cybersecurity-related education curricula, training, and apprenticeship programs, from primary through higher education; and

(B) within 120 days of the date of this order, provide a report to the President, through the Assistant to the President for Homeland Security and Counterterrorism, with findings and recommendations regarding how to support the growth and sustainment of the Nation's cybersecurity workforce in both the public and private sectors.

(ii) The Director of National Intelligence, in consultation with the heads of other agencies identified by the Director of National Intelligence, shall:

(A) review the workforce development efforts of potential foreign cyber peers in order to help identify foreign workforce development practices likely to affect long-term United States cybersecurity competitiveness; and

(B) within 60 days of the date of this order, provide a report to the President through the Assistant to the President for Homeland Security and Counterterrorism on the findings of the review carried out pursuant to subsection (d)(ii)(A) of this section.

(iii) The Secretary of Defense, in coordination with the Secretary of Commerce, the Secretary of Homeland Security, and the Director of National Intelligence, shall:

(A) assess the scope and sufficiency of United States efforts to ensure that the United States maintains or increases its advantage in national-security-related cyber capabilities; and

(B) within 150 days of the date of this order, provide a report to the President, through the Assistant to the President for Homeland Security and Counterterrorism, with findings and recommendations on the assessment carried out pursuant to subsection (d)(iii)(A) of this section.

(iv) The reports described in this subsection may be classified in full or in part, as appropriate.

SEC. 4. *Definitions.* For the purposes of this order:

(a) The term “appropriate stakeholders” means any non-executive-branch person or entity that elects to participate in an open and transparent process established by the Secretary of Commerce and the Secretary of Homeland Security under section 2(d) of this order.

(b) The term “information technology” (IT) has the meaning given to that term in section 11101(6) of title 40, United States Code, and further includes hardware and software systems of agencies that monitor and control physical equipment and processes.

(c) The term “IT architecture” refers to the integration and implementation of IT within an agency.

(d) The term “network architecture” refers to the elements of IT architecture that enable or facilitate communications between two or more IT assets.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) All actions taken pursuant to this order shall be consistent with requirements and authorities to pro-

tect intelligence and law enforcement sources and methods. Nothing in this order shall be construed to supersede measures established under authority of law to protect the security and integrity of specific activities and associations that are in direct support of intelligence or law enforcement operations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

EX. ORD. NO. 13870. AMERICA'S CYBERSECURITY WORKFORCE

Ex. Ord. No. 13870, May 2, 2019, 84 F.R. 20523, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to better ensure continued American economic prosperity and national security, it is hereby ordered as follows:

SECTION 1. *Policy.* (a) America's cybersecurity workforce is a strategic asset that protects the American people, the homeland, and the American way of life. The National Cyber Strategy, the President's 2018 Management Agenda, and Executive Order 13800 of May 11, 2017 (Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure) [set out above], each emphasize [sic] that a superior cybersecurity workforce will promote American prosperity and preserve peace. America's cybersecurity workforce is a diverse group of practitioners who govern, design, defend, analyze, administer, operate, and maintain the data, systems, and networks on which our economy and way of life depend. Whether they are employed in the public or private sectors, they are guardians of our national and economic security.

(b) The United States Government must enhance the workforce mobility of America's cybersecurity practitioners to improve America's national cybersecurity. During their careers, America's cybersecurity practitioners will serve in various roles for multiple and diverse entities. United States Government policy must facilitate the seamless movement of cybersecurity practitioners between the public and private sectors, maximizing the contributions made by their diverse skills, experiences, and talents to our Nation.

(c) The United States Government must support the development of cybersecurity skills and encourage ever-greater excellence so that America can maintain its competitive edge in cybersecurity. The United States Government must also recognize and reward the country's highest-performing cybersecurity practitioners and teams.

(d) The United States Government must create the organizational and technological tools required to maximize the cybersecurity talents and capabilities of American workers—especially when those talents and capabilities can advance our national and economic security. The Nation is experiencing a shortage of cybersecurity talent and capability, and innovative approaches are required to improve access to training that maximizes individuals' cybersecurity knowledge, skills, and abilities. Training opportunities, such as work-based learning, apprenticeships, and blended learning approaches, must be enhanced for both new workforce entrants and those who are advanced in their careers.

(e) In accordance with Executive Order 13800, the President will continue to hold heads of executive departments and agencies (agencies) accountable for managing cybersecurity risk to their enterprises, which includes ensuring the effectiveness of their cybersecurity workforces.

SEC. 2. *Strengthening the Federal Cybersecurity Workforce.* (a) To grow the cybersecurity capability of the United States Government, increase integration of the Federal cybersecurity workforce, and strengthen the skills of Federal information technology and

cybersecurity practitioners, the Secretary of Homeland Security, in consultation with the Director of the Office of Management and Budget (OMB) and the Director of the Office of Personnel Management (OPM), shall establish a cybersecurity rotational assignment program, which will serve as a mechanism for knowledge transfer and a development program for cybersecurity practitioners. Within 90 days of the date of this order [May 2, 2019], the Secretary of Homeland Security, in consultation with the Directors of OMB and OPM, shall provide a report to the President that describes the proposed program, identifies its resource implications, and recommends actions required for its implementation. The report shall evaluate how to achieve the following objectives, to the extent permitted by applicable law, as part of the program:

(i) The non-reimbursable detail of information technology and cybersecurity employees, who are nominated by their employing agencies, to serve at the Department of Homeland Security (DHS);

(ii) The non-reimbursable detail of experienced cybersecurity DHS employees to other agencies to assist in improving those agencies' cybersecurity risk management;

(iii) The use of the National Initiative for Cybersecurity Education Cybersecurity Workforce Framework (NICE Framework) as the basis for cybersecurity skill requirements for program participants;

(iv) The provision of training curricula and expansion of learning experiences to develop participants' skill levels; and

(v) Peer mentoring to enhance workforce integration.

(b) Consistent with applicable law and to the maximum extent practicable, the Administrator of General Services, in consultation with the Director of OMB and the Secretary of Commerce, shall:

(i) Incorporate the NICE Framework lexicon and taxonomy into workforce knowledge and skill requirements used in contracts for information technology and cybersecurity services;

(ii) Ensure that contracts for information technology and cybersecurity services include reporting requirements that will enable agencies to evaluate whether personnel have the necessary knowledge and skills to perform the tasks specified in the contract, consistent with the NICE Framework; and

(iii) Provide a report to the President, within 1 year of the date of this order, that describes how the NICE Framework has been incorporated into contracts for information technology and cybersecurity services, evaluates the effectiveness of this approach in improving services provided to the United States Government, and makes recommendations to increase the effective use of the NICE Framework by United States Government contractors.

(c) Within 180 days of the date of this order, the Director of OPM, in consultation with the Secretary of Commerce, the Secretary of Homeland Security, and the heads of other agencies as appropriate, shall identify a list of cybersecurity aptitude assessments for agencies to use in identifying current employees with the potential to acquire cybersecurity skills for placement in reskilling programs to perform cybersecurity work. Agencies shall incorporate one or more of these assessments into their personnel development programs, as appropriate and consistent with applicable law.

(d) Agencies shall ensure that existing awards and decorations for the uniformed services and civilian personnel recognize performance and achievements in the areas of cybersecurity and cyber-operations, including by ensuring the availability of awards and decorations equivalent to citations issued pursuant to Executive Order 10694 of January 10, 1957 (Authorizing the Secretaries of the Army, Navy, and Air Force To Issue Citations in the Name of the President of the United States to Military and Naval Units for Outstanding Performance in Action) [22 F.R. 253], as amended. Where necessary and appropriate, agencies shall establish new

awards and decorations to recognize performance and achievements in the areas of cybersecurity and cyber-operations. The Assistant to the President for National Security Affairs may recommend to agencies that any cyber unified coordination group or similar ad hoc interagency group that has addressed a significant cybersecurity or cyber-operations-related national security crisis, incident, or effort be recognized for appropriate awards and decorations.

(e) The Secretary of Homeland Security, in consultation with the Secretary of Defense, the Director of the Office of Science and Technology Policy, the Director of OMB, and the heads of other appropriate agencies, shall develop a plan for an annual cybersecurity competition (President's Cup Cybersecurity Competition) for Federal civilian and military employees. The goal of the competition shall be to identify, challenge, and reward the United States Government's best cybersecurity practitioners and teams across offensive and defensive cybersecurity disciplines. The plan shall be submitted to the President within 90 days of the date of this order. The first competition shall be held no later than December 31, 2019, and annually thereafter. The plan for the competition shall address the following:

(i) The challenges and benefits of inviting advisers, participants, or observers from non-Federal entities to observe or take part in the competition and recommendations for including them in future competitions, as appropriate;

(ii) How the Department of Energy, through the National Laboratories, in consultation with the Administrator of the United States Digital Service, can provide expert technical advice and assistance to support the competition, as appropriate;

(iii) The parameters for the competition, including the development of multiple individual and team events that test cybersecurity skills related to the NICE Framework and other relevant skills, as appropriate. These parameters should include competition categories involving individual and team events, software reverse engineering and exploitation, network operations, forensics, big data analysis, cyber analysis, cyber defense, cyber exploitation, secure programming, obfuscated coding, cyber-physical systems, and other disciplines;

(iv) How to encourage agencies to select their best cybersecurity practitioners as individual and team participants. Such practitioners should include Federal employees and uniformed services personnel from Federal civilian agencies, as well as Department of Defense active duty military personnel, civilians, and those serving in a drilling reserve capacity in the Armed Forces Reserves or National Guard;

(v) The extent to which agencies, as well as uniformed services, may develop a President's Cup awards program that is consistent with applicable law and regulations governing awards and that allows for the provision of cash awards of not less than \$25,000. Any such program shall require the agency to establish an awards program before allowing its employees to participate in the President's Cup Cybersecurity Competition. In addition, any such program may not preclude agencies from recognizing winning and non-winning participants through other means, including honorary awards, informal recognition awards, rating-based cash awards, time-off awards, Quality Step Increases, or other agency-based compensation flexibilities as appropriate and consistent with applicable law; and

(vi) How the uniformed services, as appropriate and consistent with applicable law, may designate service members who win these competitions as having skills at a time when there is a critical shortage of such skills within the uniformed services. The plan should also address how the uniformed services may provide winning service members with a combination of bonuses, advancements, and meritorious recognition to be determined by the Secretaries of the agencies concerned.

(f) The Director of OMB shall, in consultation with appropriate agencies, develop annually a list of agen-

cies and subdivisions related to cybersecurity that have a primary function of intelligence, counterintelligence, investigative, or national security work, including descriptions of such functions. The Director of OMB shall provide this list to the President, through the Deputy Assistant to the President for Homeland Security and Counterterrorism (DAPHSCT), every year starting September 1, 2019, for consideration of whether those agencies or subdivisions should be exempted from coverage under the Federal Labor-Management Relations Program, consistent with the requirements of section 7103(b)(1) of title 5, United States Code.

SEC. 3. *Strengthening the Nation's Cybersecurity Workforce.* (a) The Secretary of Commerce and the Secretary of Homeland Security (Secretaries), in coordination with the Secretary of Education and the heads of other agencies as the Secretaries determine is appropriate, shall execute, consistent with applicable law and to the greatest extent practicable, the recommendations from the report to the President on Supporting the Growth and Sustainment of the Nation's Cybersecurity Workforce (Workforce Report) developed pursuant to Executive Order 13800. The Secretaries shall develop a consultative process that includes Federal, State, territorial, local, and tribal governments, academia, private-sector stakeholders, and other relevant partners to assess and make recommendations to address national cybersecurity workforce needs and to ensure greater mobility in the American cybersecurity workforce. To fulfill the Workforce Report's vision of preparing, growing, and sustaining a national cybersecurity workforce that safeguards and promotes America's national security and economic prosperity, priority consideration will be given to the following imperatives:

(i) To launch a national Call to Action to draw attention to and mobilize public- and private-sector resources to address cybersecurity workforce needs;

(ii) To transform, elevate, and sustain the cybersecurity learning environment to grow a dynamic and diverse cybersecurity workforce;

(iii) To align education and training with employers' cybersecurity workforce needs, improve coordination, and prepare individuals for lifelong careers; and

(iv) To establish and use measures that demonstrate the effectiveness and impact of cybersecurity workforce investments.

(b) To strengthen the ability of the Nation to identify and mitigate cybersecurity vulnerabilities in critical infrastructure and defense systems, particularly cyber-physical systems for which safety and reliability depend on secure control systems, the Secretary of Defense, the Secretary of Transportation, the Secretary of Energy, and the Secretary of Homeland Security, in coordination with the Director of OPM and the Secretary of Labor, shall provide a report to the President, through the DAPHSCT, within 180 days of the date of this order that:

(i) Identifies and evaluates skills gaps in Federal and non-Federal cybersecurity personnel and training gaps for specific critical infrastructure sectors, defense critical infrastructure, and the Department of Defense's platform information technologies; and

(ii) Recommends curricula for closing the identified skills gaps for Federal personnel and steps the United States Government can take to close such gaps for non-Federal personnel by, for example, supporting the development of similar curricula by education or training providers.

(c) Within 1 year of the date of this order, the Secretary of Education, in consultation with the DAPHSCT and the National Science Foundation, shall develop and implement, consistent with applicable law, an annual Presidential Cybersecurity Education Award to be presented to one elementary and one secondary school educator per year who best instill skills, knowledge, and passion with respect to cybersecurity and cybersecurity-related subjects. In developing and implementing this award, the Secretary of Education shall emphasize demonstrated superior educator ac-

complishment—without respect to research, scholarship, or technology development—as well as academic achievement by the educator's students.

(d) The Secretary of Commerce, the Secretary of Labor, the Secretary of Education, the Secretary of Homeland Security, and the heads of other appropriate agencies shall encourage the voluntary integration of the NICE Framework into existing education, training, and workforce development efforts undertaken by State, territorial, local, tribal, academic, non-profit, and private-sector entities, consistent with applicable law. The Secretary of Commerce shall provide annual updates to the President regarding effective uses of the NICE Framework by non-Federal entities and make recommendations for improving the application of the NICE Framework in cybersecurity education, training, and workforce development.

SEC. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

SUBCHAPTER I—CYBERSECURITY INFORMATION SHARING

§ 1500. National Cyber Director

(a) Establishment

There is established, within the Executive Office of the President, the Office of the National Cyber Director (in this section referred to as the “Office”).

(b) National Cyber Director

(1) In general

The Office shall be headed by the National Cyber Director (in this section referred to as the “Director”) who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Position

The Director shall hold office at the pleasure of the President.

(3) Pay and allowances

The Director shall be entitled to receive the same pay and allowances as are provided for level II of the Executive Schedule under section 5313 of title 5.

(c) Duties of the National Cyber Director

(1) In general

Subject to the authority, direction, and control of the President, the Director shall—

(A) serve as the principal advisor to the President on cybersecurity policy and strategy relating to the coordination of—

(i) information security and data protection;

(ii) programs and policies intended to improve the cybersecurity posture of the United States;

(iii) efforts to understand and deter malicious cyber activity;

(iv) efforts to increase the security of information and communications technology and services and to promote national supply chain risk management and vendor security;

(v) diplomatic and other efforts to develop norms and international consensus around responsible state behavior in cyberspace;

(vi) awareness and adoption of emerging technology that may enhance, augment, or degrade the cybersecurity posture of the United States; and

(vii) such other cybersecurity matters as the President considers appropriate;

(B) offer advice and consultation to the National Security Council and its staff, the Homeland Security Council and its staff, and relevant Federal departments and agencies, for their consideration, relating to the development and coordination of national cyber policy and strategy, including the National Cyber Strategy;

(C) lead the coordination of implementation of national cyber policy and strategy, including the National Cyber Strategy, by—

(i) in coordination with the heads of relevant Federal departments or agencies, monitoring and assessing the effectiveness, including cost-effectiveness, of the implementation of such national cyber policy and strategy by Federal departments and agencies;

(ii) making recommendations, relevant to changes in the organization, personnel, and resource allocation and to policies of Federal departments and agencies, to the heads of relevant Federal departments and agencies in order to implement such national cyber policy and strategy;

(iii) reviewing the annual budget proposals for relevant Federal departments and agencies and advising the heads of such departments and agencies whether such proposals are consistent with such national cyber policy and strategy;

(iv) continuously assessing and making relevant recommendations to the President on the appropriate level of integration and interoperability across the Federal cyber centers;

(v) coordinating with the Attorney General, the Federal Chief Information Officer, the Director of the Office of Management and Budget, the Director of National Intelligence, and the Director of the Cybersecurity and Infrastructure Security Agency, on the streamlining of Federal policies and guidelines, including with respect to implementation of subchapter II of chapter 35 of title 44, and, as appropriate or applicable, regulations relating to cybersecurity;

(vi) reporting annually to the President, the Assistant to the President for National Security Affairs, and Congress on the state of the cybersecurity posture of the United States, the effectiveness of such national cyber policy and strategy, and the status of the implementation of such national cyber policy and strategy by Federal departments and agencies; and

(vii) such other activity as the President considers appropriate to further such national cyber policy and strategy;

(D) lead coordination of the development and ensuring implementation by the Federal Government of integrated incident response to cyberattacks and cyber campaigns of significant consequence, including—

(i) ensuring and facilitating coordination among relevant Federal departments and agencies in the development of integrated operational plans, processes, and playbooks, including for incident response, that feature—

(I) clear lines of authority and lines of effort across the Federal Government;

(II) authorities that have been delegated to an appropriate level to facilitate effective operational responses across the Federal Government; and

(III) support for the integration of defensive cyber plans and capabilities with offensive cyber plans and capabilities in a manner consistent with improving the cybersecurity posture of the United States;

(ii) ensuring the exercising of defensive operational plans, processes, and playbooks for incident response;

(iii) ensuring the updating of defensive operational plans, processes, and playbooks for incident response as needed to keep them updated; and

(iv) reviewing and ensuring that defensive operational plans, processes, and playbooks improve coordination with relevant private sector entities, as appropriate;

(E) preparing the response by the Federal Government to cyberattacks and cyber campaigns of significant consequence across Federal departments and agencies with responsibilities pertaining to cybersecurity and with the relevant private sector entities, including—

(i) developing for the approval of the President, in coordination with the Assistant to the President for National Security Affairs and the heads of relevant Federal departments and agencies, operational priorities, requirements, and plans;

(ii) ensuring incident response is executed consistent with the plans described in clause (i); and

(iii) ensuring relevant Federal department and agency consultation with relevant private sector entities in incident response;

(F) coordinate and consult with private sector leaders on cybersecurity and emerging technology issues in support of, and in coordination with, the Director of the Cybersecurity and Infrastructure Security Agency, the Director of National Intelligence, and the heads of other Federal departments and agencies, as appropriate;

(G) annually report to Congress on cybersecurity threats and issues facing the United States, including any new or emerging technologies that may affect national se-

curity, economic prosperity, or enforcing the rule of law; and

(H) be responsible for such other functions as the President may direct.

(2) Delegation of authority

(A) The Director may—

(i) serve as the senior representative to any organization that the President may establish for the purpose of providing the President advice on cybersecurity;

(ii) subject to subparagraph (B), be included as a participant in preparations for and, when appropriate, the execution of domestic and international summits and other international meetings at which cybersecurity is a major topic;

(iii) delegate any of the Director's functions, powers, and duties to such officers and employees of the Office as the Director considers appropriate; and

(iv) authorize such successive re-delegations of such functions, powers, and duties to such officers and employees of the Office as the Director considers appropriate.

(B) In acting under subparagraph (A)(ii) in the case of a summit or a meeting with an international partner, the Director shall act in coordination with the Secretary of State.

(d) Omitted

(e) Powers of the Director

(1) In general

The Director may, for the purposes of carrying out the functions of the Director under this section—

(A) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their duties, except that not more than 75 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the basic rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5;

(B) employ experts and consultants in accordance with section 3109 of title 5, and compensate individuals so employed for each day (including travel time) at rates not in excess of the maximum rate of basic pay for grade GS-15 as provided in section 5332 of such title, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of such title 5 for persons in Federal Government service employed intermittently;

(C) accept officers or employees of the United States or members of the Armed Forces on a detail from an element of the intelligence community (as such term is defined in section 3003(4) of title 50) or from another element of the Federal Government on a nonreimbursable basis, as jointly agreed to by the heads of the receiving and detailing elements, for a period not to exceed three years;

(D) promulgate such rules and regulations as may be necessary to carry out the functions, powers, and duties vested in the Director;

(E) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

(F) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the Director may determine appropriate, with any Federal agency, or with any public or private person or entity;

(G) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(H) adopt an official seal, which shall be judicially noticed; and

(I) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which expenditures relating thereto were made.

(2) Rules of construction regarding details

Nothing in paragraph (1)(C) may be construed as imposing any limitation on any other authority for reimbursable or nonreimbursable details. A nonreimbursable detail made pursuant to such paragraph shall not be considered an augmentation of the appropriations of the receiving element of the Office of the National Cyber Director.

(f) Rules of construction

Nothing in this section may be construed as—

(1) modifying any authority or responsibility, including any operational authority or responsibility of any head of a Federal department or agency;

(2) authorizing the Director or any person acting under the authority of the Director to interfere with or to direct a criminal or national security investigation, arrest, search, seizure, or disruption operation;

(3) amending a legal restriction that was in effect on the day before January 1, 2021 that requires a law enforcement agency to keep confidential information learned in the course of a criminal or national security investigation;

(4) authorizing the Director or any person acting under the authority of the Director to interfere with or to direct a military operation;

(5) authorizing the Director or any person acting under the authority of the Director to interfere with or to direct any diplomatic or consular activity;

(6) authorizing the Director or any person acting under the authority of the Director to interfere with or to direct an intelligence activity, resource, or operation; or

(7) authorizing the Director or any person acting under the authority of the Director to modify the classification of intelligence information.

(g) Definitions

In this section:

(1) The term “cybersecurity posture” means the ability to identify, to protect against, to detect, to respond to, and to recover from an intrusion in an information system the compromise of which could constitute a cyber attack or cyber campaign of significant consequence.

(2) The term “cyber attack and cyber campaign of significant consequence” means an incident or series of incidents that has the purpose or effect of—

(A) causing a significant disruption to the confidentiality, integrity, or availability of a Federal information system;

(B) harming, or otherwise significantly compromising the provision of service by, a computer or network of computers that support one or more entities in a critical infrastructure sector;

(C) significantly compromising the provision of services by one or more entities in a critical infrastructure sector;

(D) causing a significant misappropriation of funds or economic resources, trade secrets, personal identifiers, or financial information for commercial or competitive advantage or private financial gain; or

(E) otherwise constituting a significant threat to the national security, foreign policy, or economic health or financial stability of the United States.

(3) The term “incident” has the meaning given such term in section 3552 of title 44.

(4) The term “incident response” means a government or private sector activity that detects, mitigates, or recovers from a cyber attack or cyber campaign of significant consequence.

(5) The term “information security” has the meaning given such term in section 3552 of title 44.

(6) The term “intelligence” has the meaning given such term in section 3003 of title 50.

(Pub. L. 116–283, div. A, title XVII, §1752, Jan. 1, 2021, 134 Stat. 4144; Pub. L. 117–81, div. A, title XV, §1552, Dec. 27, 2021, 135 Stat. 2070.)

Editorial Notes

CODIFICATION

Section was enacted as part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, and not as part of the Cybersecurity Information Sharing Act of 2015 which comprises this subchapter and not as part of the Cybersecurity Act of 2015 which comprises this chapter.

Section is comprised of section 1752 of Pub. L. 116–283. Subsec. (d) of section 1752 of Pub. L. 116–283 amended section 3021 of Title 50, War and National Defense.

AMENDMENTS

2021—Subsec. (e). Pub. L. 117–81, §1552(1), (2), (4), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) to (8) as subpars. (A) to (H), respectively, of par. (1) and realigned margins, and added par. (2).

Subsec. (e)(1)(C) to (I). Pub. L. 117–81, §1552(3), added subpar. (C) and redesignated former subpars. (C) to (H) (as redesignated by section 1552(1) of Pub. L. 117–81, see above) as (D) to (I), respectively.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–260, §1, Dec. 21, 2022, 136 Stat. 2389, provided that: “This Act [enacting section 1526 of this title and provisions set out as notes under section 1526 of this title] may be cited as the ‘Quantum Computing Cybersecurity Preparedness Act’.”

§ 1501. Definitions

In this subchapter:

(1) Agency

The term “agency” has the meaning given the term in section 3502 of title 44.

(2) Antitrust laws

The term “antitrust laws”—

(A) has the meaning given the term in section 12 of title 15;

(B) includes section 45 of title 15 to the extent that section 45 of title 15 applies to unfair methods of competition; and

(C) includes any State antitrust law, but only to the extent that such law is consistent with the law referred to in subparagraph (A) or the law referred to in subparagraph (B).

(3) Appropriate Federal entities

The term “appropriate Federal entities” means the following:

(A) The Department of Commerce.

(B) The Department of Defense.

(C) The Department of Energy.

(D) The Department of Homeland Security.

(E) The Department of Justice.

(F) The Department of the Treasury.

(G) The Office of the Director of National Intelligence.

(4) Cybersecurity purpose

The term “cybersecurity purpose” has the meaning given the term in section 650 of this title.

(5) Cybersecurity threat

The term “cybersecurity threat” has the meaning given the term in section 650 of this title.

(6) Cyber threat indicator

The term “cyber threat indicator” has the meaning given the term in section 650 of this title.

(7) Defensive measure

The term “defensive measure” has the meaning given the term in section 650 of this title.

(8) Federal entity

The term “Federal entity” means a department or agency of the United States or any component of such department or agency.

(9) Information system

The term “information system” has the meaning given the term in section 650 of this title.

(10) Local government

The term “local government” means any borough, city, county, parish, town, township,

village, or other political subdivision of a State.

(11) Malicious cyber command and control

The term “malicious cyber command and control” has the meaning given the term in section 650 of this title.

(12) Malicious reconnaissance

The term “malicious reconnaissance” has the meaning given the term in section 650 of this title.

(13) Monitor

The term “monitor” has the meaning given the term in section 650 of this title.

(14) Non-Federal entity

(A) In general

Except as otherwise provided in this paragraph, the term “non-Federal entity” means any private entity, non-Federal government agency or department, or State, tribal, or local government (including a political subdivision, department, or component thereof).

(B) Inclusions

The term “non-Federal entity” includes a government agency or department of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

(C) Exclusion

The term “non-Federal entity” does not include a foreign power as defined in section 1801 of title 50.

(15) Private entity

(A) In general

Except as otherwise provided in this paragraph, the term “private entity” means any person or private group, organization, proprietorship, partnership, trust, cooperative, corporation, or other commercial or non-profit entity, including an officer, employee, or agent thereof.

(B) Inclusion

The term “private entity” includes a State, tribal, or local government performing utility services, such as electric, natural gas, or water services.

(C) Exclusion

The term “private entity” does not include a foreign power as defined in section 1801 of title 50.

(16) Security control

The term “security control” has the meaning given the term in section 650 of this title.

(17) Security vulnerability

The term “security vulnerability” has the meaning given the term in section 650 of this title.

(18) Tribal

The term “tribal” has the meaning given the term “Indian tribe” in section 5304 of title 25.

(Pub. L. 114–113, div. N, title I, §102, Dec. 18, 2015, 129 Stat. 2936; Pub. L. 117–263, div. G, title LXXI, §7143(b)(4), Dec. 23, 2022, 136 Stat. 3661.)

Editorial Notes

AMENDMENTS

2022—Pars. (4) to (7). Pub. L. 117–263, §7143(b)(4)(A), added pars. (4) to (7) and struck out former pars. (4) to (7) which defined cybersecurity purpose, cybersecurity threat, cyber threat indicator, and defensive measure, respectively.

Par. (9). Pub. L. 117–263, §7143(b)(4)(B), added par. (9) and struck out former par. (9) which defined information system.

Pars. (11) to (13). Pub. L. 117–263, §7143(b)(4)(C), added pars. (11) to (13) and struck out former pars. (11) to (13) which defined malicious cyber command and control, malicious reconnaissance, and monitor, respectively.

Pars. (16), (17). Pub. L. 117–263, §7143(b)(4)(D), added pars. (16) and (17) and struck out former pars. (16) and (17) which defined security control and security vulnerability, respectively.

Statutory Notes and Related Subsidiaries

SHORT TITLE

Pub. L. 114–113, div. N, §1(a), Dec. 18, 2015, 129 Stat. 2935, provided that: “This division [enacting this chapter and sections 149 and 151 of this title, amending sections 131, 148, 149, and 150 of this title, section 1029 of Title 18, Crimes and Criminal Procedure, and sections 3553 and 3554 of Title 44, Public Printing and Documents, enacting provisions set out as notes under this section and sections 101, 131, and 151 of this title and section 301 of Title 5, Government Organization and Employees] may be cited as the ‘Cybersecurity Act of 2015’.”

Pub. L. 114–113, div. N, title I, §101, Dec. 18, 2015, 129 Stat. 2936, provided that: “This title [enacting this subchapter] may be cited as the ‘Cybersecurity Information Sharing Act of 2015’.”

Pub. L. 114–113, div. N, title II, §221, Dec. 18, 2015, 129 Stat. 2963, provided that: “This subtitle [subtitle B (§§221–229) of title II of div. N of Pub. L. 114–113, enacting subchapter II of this chapter and sections 149 and 151 of this title, amending sections 148, 149, and 150 of this title and sections 3553 and 3554 of Title 44, Public Printing and Documents, and enacting provisions set out as a note under section 151 of this title] may be cited as the ‘Federal Cybersecurity Enhancement Act of 2015’.”

§ 1502. Sharing of information by the Federal Government

(a) In general

Consistent with the protection of classified information, intelligence sources and methods, and privacy and civil liberties, the Director of National Intelligence, the Secretary of Homeland Security, the Secretary of Defense, and the Attorney General, in consultation with the heads of the appropriate Federal entities, shall jointly develop and issue procedures to facilitate and promote—

(1) the timely sharing of classified cyber threat indicators and defensive measures in the possession of the Federal Government with representatives of relevant Federal entities and non-Federal entities that have appropriate security clearances;

(2) the timely sharing with relevant Federal entities and non-Federal entities of cyber threat indicators, defensive measures, and information relating to cybersecurity threats or authorized uses under this subchapter, in the possession of the Federal Government that may be declassified and shared at an unclassified level;

(3) the timely sharing with relevant Federal entities and non-Federal entities, or the public if appropriate, of unclassified, including controlled unclassified, cyber threat indicators and defensive measures in the possession of the Federal Government;

(4) the timely sharing with Federal entities and non-Federal entities, if appropriate, of information relating to cybersecurity threats or authorized uses under this subchapter, in the possession of the Federal Government about cybersecurity threats to such entities to prevent or mitigate adverse effects from such cybersecurity threats; and

(5) the periodic sharing, through publication and targeted outreach, of cybersecurity best practices that are developed based on ongoing analyses of cyber threat indicators, defensive measures, and information relating to cybersecurity threats or authorized uses under this subchapter, in the possession of the Federal Government, with attention to accessibility and implementation challenges faced by small business concerns (as defined in section 632 of title 15).

(b) Development of procedures

(1) In general

The procedures developed under subsection (a) shall—

(A) ensure the Federal Government has and maintains the capability to share cyber threat indicators and defensive measures in real time consistent with the protection of classified information;

(B) incorporate, to the greatest extent practicable, existing processes and existing roles and responsibilities of Federal entities and non-Federal entities for information sharing by the Federal Government, including sector specific information sharing and analysis centers;

(C) include procedures for notifying, in a timely manner, Federal entities and non-Federal entities that have received a cyber threat indicator or defensive measure from a Federal entity under this subchapter that is known or determined to be in error or in contravention of the requirements of this subchapter or another provision of Federal law or policy of such error or contravention;

(D) include requirements for Federal entities sharing cyber threat indicators or defensive measures to implement and utilize security controls to protect against unauthorized access to or acquisition of such cyber threat indicators or defensive measures;

(E) include procedures that require a Federal entity, prior to the sharing of a cyber threat indicator—

(i) to review such cyber threat indicator to assess whether such cyber threat indicator contains any information not directly related to a cybersecurity threat that such Federal entity knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual and remove such information; or

(ii) to implement and utilize a technical capability configured to remove any infor-

mation not directly related to a cybersecurity threat that the Federal entity knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual; and

(F) include procedures for notifying, in a timely manner, any United States person whose personal information is known or determined to have been shared by a Federal entity in violation of this subchapter.

(2) Consultation

In developing the procedures required under this section, the Director of National Intelligence, the Secretary of Homeland Security, the Secretary of Defense, and the Attorney General shall consult with appropriate Federal entities, including the Small Business Administration and the National Laboratories (as defined in section 15801 of title 42), to ensure that effective protocols are implemented that will facilitate and promote the sharing of cyber threat indicators by the Federal Government in a timely manner.

(c) Submittal to Congress

Not later than 60 days after December 18, 2015, the Director of National Intelligence, in consultation with the heads of the appropriate Federal entities, shall submit to Congress the procedures required by subsection (a).

(Pub. L. 114–113, div. N, title I, § 103, Dec. 18, 2015, 129 Stat. 2939.)

§ 1503. Authorizations for preventing, detecting, analyzing, and mitigating cybersecurity threats

(a) Authorization for monitoring

(1) In general

Notwithstanding any other provision of law, a private entity may, for cybersecurity purposes, monitor—

(A) an information system of such private entity;

(B) an information system of another non-Federal entity, upon the authorization and written consent of such other entity;

(C) an information system of a Federal entity, upon the authorization and written consent of an authorized representative of the Federal entity; and

(D) information that is stored on, processed by, or transiting an information system monitored by the private entity under this paragraph.

(2) Construction

Nothing in this subsection shall be construed—

(A) to authorize the monitoring of an information system, or the use of any information obtained through such monitoring, other than as provided in this subchapter; or

(B) to limit otherwise lawful activity.

(b) Authorization for operation of defensive measures

(1) In general

Notwithstanding any other provision of law, a private entity may, for cybersecurity pur-

poses, operate a defensive measure that is applied to—

(A) an information system of such private entity in order to protect the rights or property of the private entity;

(B) an information system of another non-Federal entity upon written consent of such entity for operation of such defensive measure to protect the rights or property of such entity; and

(C) an information system of a Federal entity upon written consent of an authorized representative of such Federal entity for operation of such defensive measure to protect the rights or property of the Federal Government.

(2) Construction

Nothing in this subsection shall be construed—

(A) to authorize the use of a defensive measure other than as provided in this subsection; or

(B) to limit otherwise lawful activity.

(c) Authorization for sharing or receiving cyber threat indicators or defensive measures

(1) In general

Except as provided in paragraph (2) and notwithstanding any other provision of law, a non-Federal entity may, for a cybersecurity purpose and consistent with the protection of classified information, share with, or receive from, any other non-Federal entity or the Federal Government a cyber threat indicator or defensive measure.

(2) Lawful restriction

A non-Federal entity receiving a cyber threat indicator or defensive measure from another non-Federal entity or a Federal entity shall comply with otherwise lawful restrictions placed on the sharing or use of such cyber threat indicator or defensive measure by the sharing non-Federal entity or Federal entity.

(3) Construction

Nothing in this subsection shall be construed—

(A) to authorize the sharing or receiving of a cyber threat indicator or defensive measure other than as provided in this subsection; or

(B) to limit otherwise lawful activity.

(d) Protection and use of information

(1) Security of information

A non-Federal entity monitoring an information system, operating a defensive measure, or providing or receiving a cyber threat indicator or defensive measure under this section shall implement and utilize a security control to protect against unauthorized access to or acquisition of such cyber threat indicator or defensive measure.

(2) Removal of certain personal information

A non-Federal entity sharing a cyber threat indicator pursuant to this subchapter shall, prior to such sharing—

(A) review such cyber threat indicator to assess whether such cyber threat indicator

contains any information not directly related to a cybersecurity threat that the non-Federal entity knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual and remove such information; or

(B) implement and utilize a technical capability configured to remove any information not directly related to a cybersecurity threat that the non-Federal entity knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual.

(3) Use of cyber threat indicators and defensive measures by non-Federal entities

(A) In general

Consistent with this subchapter, a cyber threat indicator or defensive measure shared or received under this section may, for cybersecurity purposes—

(i) be used by a non-Federal entity to monitor or operate a defensive measure that is applied to—

(I) an information system of the non-Federal entity; or

(II) an information system of another non-Federal entity or a Federal entity upon the written consent of that other non-Federal entity or that Federal entity; and

(ii) be otherwise used, retained, and further shared by a non-Federal entity subject to—

(I) an otherwise lawful restriction placed by the sharing non-Federal entity or Federal entity on such cyber threat indicator or defensive measure; or

(II) an otherwise applicable provision of law.

(B) Construction

Nothing in this paragraph shall be construed to authorize the use of a cyber threat indicator or defensive measure other than as provided in this section.

(4) Use of cyber threat indicators by State, tribal, or local government

(A) Law enforcement use

A State, tribal, or local government that receives a cyber threat indicator or defensive measure under this subchapter may use such cyber threat indicator or defensive measure for the purposes described in section 1504(d)(5)(A) of this title.

(B) Exemption from disclosure

A cyber threat indicator or defensive measure shared by or with a State, tribal, or local government, including a component of a State, tribal, or local government that is a private entity, under this section shall be—

(i) deemed voluntarily shared information; and

(ii) exempt from disclosure under any provision of State, tribal, or local freedom of information law, open government law, open meetings law, open records law, sunshine law, or similar law requiring disclosure of information or records.

(C) State, tribal, and local regulatory authority**(i) In general**

Except as provided in clause (ii), a cyber threat indicator or defensive measure shared with a State, tribal, or local government under this subchapter shall not be used by any State, tribal, or local government to regulate, including an enforcement action, the lawful activity of any non-Federal entity or any activity taken by a non-Federal entity pursuant to mandatory standards, including an activity relating to monitoring, operating a defensive measure, or sharing of a cyber threat indicator.

(ii) Regulatory authority specifically relating to prevention or mitigation of cybersecurity threats

A cyber threat indicator or defensive measure shared as described in clause (i) may, consistent with a State, tribal, or local government regulatory authority specifically relating to the prevention or mitigation of cybersecurity threats to information systems, inform the development or implementation of a regulation relating to such information systems.

(e) Antitrust exemption**(1) In general**

Except as provided in section 1507(e) of this title, it shall not be considered a violation of any provision of antitrust laws for 2 or more private entities to exchange or provide a cyber threat indicator or defensive measure, or assistance relating to the prevention, investigation, or mitigation of a cybersecurity threat, for cybersecurity purposes under this subchapter.

(2) Applicability

Paragraph (1) shall apply only to information that is exchanged or assistance provided in order to assist with—

(A) facilitating the prevention, investigation, or mitigation of a cybersecurity threat to an information system or information that is stored on, processed by, or transiting an information system; or

(B) communicating or disclosing a cyber threat indicator to help prevent, investigate, or mitigate the effect of a cybersecurity threat to an information system or information that is stored on, processed by, or transiting an information system.

(f) No right or benefit

The sharing of a cyber threat indicator or defensive measure with a non-Federal entity under this subchapter shall not create a right or benefit to similar information by such non-Federal entity or any other non-Federal entity.

(Pub. L. 114-113, div. N, title I, §104, Dec. 18, 2015, 129 Stat. 2940.)

§ 1504. Sharing of cyber threat indicators and defensive measures with the Federal Government**(a) Requirement for policies and procedures****(1) Interim policies and procedures**

Not later than 60 days after December 18, 2015, the Attorney General and the Secretary of Homeland Security shall, in consultation with the heads of the appropriate Federal entities, jointly develop and submit to Congress interim policies and procedures relating to the receipt of cyber threat indicators and defensive measures by the Federal Government.

(2) Final policies and procedures

Not later than 180 days after December 18, 2015, the Attorney General and the Secretary of Homeland Security shall, in consultation with the heads of the appropriate Federal entities, jointly issue and make publicly available final policies and procedures relating to the receipt of cyber threat indicators and defensive measures by the Federal Government.

(3) Requirements concerning policies and procedures

Consistent with the guidelines required by subsection (b), the policies and procedures developed or issued under this subsection shall—

(A) ensure that cyber threat indicators shared with the Federal Government by any non-Federal entity pursuant to section 1503(c) of this title through the real-time process described in subsection (c) of this section—

(i) are shared in an automated manner with all of the appropriate Federal entities;

(ii) are only subject to a delay, modification, or other action due to controls established for such real-time process that could impede real-time receipt by all of the appropriate Federal entities when the delay, modification, or other action is due to controls—

(I) agreed upon unanimously by all of the heads of the appropriate Federal entities;

(II) carried out before any of the appropriate Federal entities retains or uses the cyber threat indicators or defensive measures; and

(III) uniformly applied such that each of the appropriate Federal entities is subject to the same delay, modification, or other action; and

(iii) may be provided to other Federal entities;

(B) ensure that cyber threat indicators shared with the Federal Government by any non-Federal entity pursuant to section 1503 of this title in a manner other than the real-time process described in subsection (c) of this section—

(i) are shared as quickly as operationally practicable with all of the appropriate Federal entities;

(ii) are not subject to any unnecessary delay, interference, or any other action that could impede receipt by all of the appropriate Federal entities; and

(iii) may be provided to other Federal entities; and

(C) ensure there are—

- (i) audit capabilities; and
- (ii) appropriate sanctions in place for officers, employees, or agents of a Federal entity who knowingly and willfully conduct activities under this subchapter in an unauthorized manner.

(4) Guidelines for entities sharing cyber threat indicators with Federal Government

(A) In general

Not later than 60 days after December 18, 2015, the Attorney General and the Secretary of Homeland Security shall jointly develop and make publicly available guidance to assist entities and promote sharing of cyber threat indicators with Federal entities under this subchapter.

(B) Contents

The guidelines developed and made publicly available under subparagraph (A) shall include guidance on the following:

(i) Identification of types of information that would qualify as a cyber threat indicator under this subchapter that would be unlikely to include information that—

(I) is not directly related to a cybersecurity threat; and

(II) is personal information of a specific individual or information that identifies a specific individual.

(ii) Identification of types of information protected under otherwise applicable privacy laws that are unlikely to be directly related to a cybersecurity threat.

(iii) Such other matters as the Attorney General and the Secretary of Homeland Security consider appropriate for entities sharing cyber threat indicators with Federal entities under this subchapter.

(b) Privacy and civil liberties

(1) Interim guidelines

Not later than 60 days after December 18, 2015, the Attorney General and the Secretary of Homeland Security shall, in consultation with heads of the appropriate Federal entities and in consultation with officers designated under section 2000ee-1 of title 42, jointly develop, submit to Congress, and make available to the public interim guidelines relating to privacy and civil liberties which shall govern the receipt, retention, use, and dissemination of cyber threat indicators by a Federal entity obtained in connection with activities authorized in this subchapter.

(2) Final guidelines

(A) In general

Not later than 180 days after December 18, 2015, the Attorney General and the Secretary of Homeland Security shall, in coordination with heads of the appropriate Federal entities and in consultation with officers designated under section 2000ee-1 of title 42 and such private entities with industry expertise as the Attorney General and the Secretary

consider relevant, jointly issue and make publicly available final guidelines relating to privacy and civil liberties which shall govern the receipt, retention, use, and dissemination of cyber threat indicators by a Federal entity obtained in connection with activities authorized in this subchapter.

(B) Periodic review

The Attorney General and the Secretary of Homeland Security shall, in coordination with heads of the appropriate Federal entities and in consultation with officers and private entities described in subparagraph (A), periodically, but not less frequently than once every 2 years, jointly review the guidelines issued under subparagraph (A).

(3) Content

The guidelines required by paragraphs (1) and (2) shall, consistent with the need to protect information systems from cybersecurity threats and mitigate cybersecurity threats—

(A) limit the effect on privacy and civil liberties of activities by the Federal Government under this subchapter;

(B) limit the receipt, retention, use, and dissemination of cyber threat indicators containing personal information of specific individuals or information that identifies specific individuals, including by establishing—

(i) a process for the timely destruction of such information that is known not to be directly related to uses authorized under this subchapter; and

(ii) specific limitations on the length of any period in which a cyber threat indicator may be retained;

(C) include requirements to safeguard cyber threat indicators containing personal information of specific individuals or information that identifies specific individuals from unauthorized access or acquisition, including appropriate sanctions for activities by officers, employees, or agents of the Federal Government in contravention of such guidelines;

(D) consistent with this subchapter, any other applicable provisions of law, and the fair information practice principles set forth in appendix A of the document entitled “National Strategy for Trusted Identities in Cyberspace” and published by the President in April 2011, govern the retention, use, and dissemination by the Federal Government of cyber threat indicators shared with the Federal Government under this subchapter, including the extent, if any, to which such cyber threat indicators may be used by the Federal Government;

(E) include procedures for notifying entities and Federal entities if information received pursuant to this section is known or determined by a Federal entity receiving such information not to constitute a cyber threat indicator;

(F) protect the confidentiality of cyber threat indicators containing personal information of specific individuals or information that identifies specific individuals to the

greatest extent practicable and require recipients to be informed that such indicators may only be used for purposes authorized under this subchapter; and

(G) include steps that may be needed so that dissemination of cyber threat indicators is consistent with the protection of classified and other sensitive national security information.

(c) Capability and process within the Department of Homeland Security

(1) In general

Not later than 90 days after December 18, 2015, the Secretary of Homeland Security, in coordination with the heads of the appropriate Federal entities, shall develop and implement a capability and process within the Department of Homeland Security that—

(A) shall accept from any non-Federal entity in real time cyber threat indicators and defensive measures, pursuant to this section;

(B) shall, upon submittal of the certification under paragraph (2) that such capability and process fully and effectively operates as described in such paragraph, be the process by which the Federal Government receives cyber threat indicators and defensive measures under this subchapter that are shared by a non-Federal entity with the Federal Government through electronic mail or media, an interactive form on an Internet website, or a real time, automated process between information systems except—

(i) consistent with section 1503 of this title, communications between a Federal entity and a non-Federal entity regarding a previously shared cyber threat indicator to describe the relevant cybersecurity threat or develop a defensive measure based on such cyber threat indicator; and

(ii) communications by a regulated non-Federal entity with such entity's Federal regulatory authority regarding a cybersecurity threat;

(C) ensures that all of the appropriate Federal entities receive in an automated manner such cyber threat indicators and defensive measures shared through the real-time process within the Department of Homeland Security;

(D) is in compliance with the policies, procedures, and guidelines required by this section; and

(E) does not limit or prohibit otherwise lawful disclosures of communications, records, or other information, including—

(i) reporting of known or suspected criminal activity, by a non-Federal entity to any other non-Federal entity or a Federal entity, including cyber threat indicators or defensive measures shared with a Federal entity in furtherance of opening a Federal law enforcement investigation;

(ii) voluntary or legally compelled participation in a Federal investigation; and

(iii) providing cyber threat indicators or defensive measures as part of a statutory or authorized contractual requirement.

(2) Certification and designation

(A) Certification of capability and process

Not later than 90 days after December 18, 2015, the Secretary of Homeland Security shall, in consultation with the heads of the appropriate Federal entities, submit to Congress a certification as to whether the capability and process required by paragraph (1) fully and effectively operates—

(i) as the process by which the Federal Government receives from any non-Federal entity a cyber threat indicator or defensive measure under this subchapter; and

(ii) in accordance with the interim policies, procedures, and guidelines developed under this subchapter.

(B) Designation

(i) In general

At any time after certification is submitted under subparagraph (A), the President may designate an appropriate Federal entity, other than the Department of Defense (including the National Security Agency), to develop and implement a capability and process as described in paragraph (1) in addition to the capability and process developed under such paragraph by the Secretary of Homeland Security, if, not fewer than 30 days before making such designation, the President submits to Congress a certification and explanation that—

(I) such designation is necessary to ensure that full, effective, and secure operation of a capability and process for the Federal Government to receive from any non-Federal entity cyber threat indicators or defensive measures under this subchapter;

(II) the designated appropriate Federal entity will receive and share cyber threat indicators and defensive measures in accordance with the policies, procedures, and guidelines developed under this subchapter, including subsection (a)(3)(A); and

(III) such designation is consistent with the mission of such appropriate Federal entity and improves the ability of the Federal Government to receive, share, and use cyber threat indicators and defensive measures as authorized under this subchapter.

(ii) Application to additional capability and process

If the President designates an appropriate Federal entity to develop and implement a capability and process under clause (i), the provisions of this subchapter that apply to the capability and process required by paragraph (1) shall also be construed to apply to the capability and process developed and implemented under clause (i).

(3) Public notice and access

The Secretary of Homeland Security shall ensure there is public notice of, and access to, the capability and process developed and implemented under paragraph (1) so that—

(A) any non-Federal entity may share cyber threat indicators and defensive measures through such process with the Federal Government; and

(B) all of the appropriate Federal entities receive such cyber threat indicators and defensive measures in real time with receipt through the process within the Department of Homeland Security consistent with the policies and procedures issued under subsection (a).

(4) Other Federal entities

The process developed and implemented under paragraph (1) shall ensure that other Federal entities receive in a timely manner any cyber threat indicators and defensive measures shared with the Federal Government through such process.

(d) Information shared with or provided to the Federal Government

(1) No waiver of privilege or protection

The provision of cyber threat indicators and defensive measures to the Federal Government under this subchapter shall not constitute a waiver of any applicable privilege or protection provided by law, including trade secret protection.

(2) Proprietary information

Consistent with section 1503(c)(2) of this title and any other applicable provision of law, a cyber threat indicator or defensive measure provided by a non-Federal entity to the Federal Government under this subchapter shall be considered the commercial, financial, and proprietary information of such non-Federal entity when so designated by the originating non-Federal entity or a third party acting in accordance with the written authorization of the originating non-Federal entity.

(3) Exemption from disclosure

A cyber threat indicator or defensive measure shared with the Federal Government under this subchapter shall be—

(A) deemed voluntarily shared information and exempt from disclosure under section 552 of title 5 and any State, tribal, or local provision of law requiring disclosure of information or records; and

(B) withheld, without discretion, from the public under section 552(b)(3)(B) of title 5 and any State, tribal, or local provision of law requiring disclosure of information or records.

(4) Ex parte communications

The provision of a cyber threat indicator or defensive measure to the Federal Government under this subchapter shall not be subject to a rule of any Federal agency or department or any judicial doctrine regarding ex parte communications with a decision-making official.

(5) Disclosure, retention, and use

(A) Authorized activities

Cyber threat indicators and defensive measures provided to the Federal Government under this subchapter may be disclosed to, retained by, and used by, consistent with

otherwise applicable provisions of Federal law, any Federal agency or department, component, officer, employee, or agent of the Federal Government solely for—

(i) a cybersecurity purpose;

(ii) the purpose of identifying—

(I) a cybersecurity threat, including the source of such cybersecurity threat; or

(II) a security vulnerability;

(iii) the purpose of responding to, or otherwise preventing or mitigating, a specific threat of death, a specific threat of serious bodily harm, or a specific threat of serious economic harm, including a terrorist act or a use of a weapon of mass destruction;

(iv) the purpose of responding to, investigating, prosecuting, or otherwise preventing or mitigating, a serious threat to a minor, including sexual exploitation and threats to physical safety; or

(v) the purpose of preventing, investigating, disrupting, or prosecuting an offense arising out of a threat described in clause (iii) or any of the offenses listed in—

(I) sections 1028 through 1030 of title 18 (relating to fraud and identity theft);

(II) chapter 37 of such title (relating to espionage and censorship); and

(III) chapter 90 of such title (relating to protection of trade secrets).

(B) Prohibited activities

Cyber threat indicators and defensive measures provided to the Federal Government under this subchapter shall not be disclosed to, retained by, or used by any Federal agency or department for any use not permitted under subparagraph (A).

(C) Privacy and civil liberties

Cyber threat indicators and defensive measures provided to the Federal Government under this subchapter shall be retained, used, and disseminated by the Federal Government—

(i) in accordance with the policies, procedures, and guidelines required by subsections (a) and (b);

(ii) in a manner that protects from unauthorized use or disclosure any cyber threat indicators that may contain—

(I) personal information of a specific individual; or

(II) information that identifies a specific individual; and

(iii) in a manner that protects the confidentiality of cyber threat indicators containing—

(I) personal information of a specific individual; or

(II) information that identifies a specific individual.

(D) Federal regulatory authority

(i) In general

Except as provided in clause (ii), cyber threat indicators and defensive measures provided to the Federal Government under this subchapter shall not be used by any

Federal, State, tribal, or local government to regulate, including an enforcement action, the lawful activities of any non-Federal entity or any activities taken by a non-Federal entity pursuant to mandatory standards, including activities relating to monitoring, operating defensive measures, or sharing cyber threat indicators.

(ii) Exceptions

(I) Regulatory authority specifically relating to prevention or mitigation of cybersecurity threats

Cyber threat indicators and defensive measures provided to the Federal Government under this subchapter may, consistent with Federal or State regulatory authority specifically relating to the prevention or mitigation of cybersecurity threats to information systems, inform the development or implementation of regulations relating to such information systems.

(II) Procedures developed and implemented under this subchapter

Clause (i) shall not apply to procedures developed and implemented under this subchapter.

(Pub. L. 114–113, div. N, title I, § 105, Dec. 18, 2015, 129 Stat. 2943.)

§ 1505. Protection from liability

(a) Monitoring of information systems

No cause of action shall lie or be maintained in any court against any private entity, and such action shall be promptly dismissed, for the monitoring of an information system and information under section 1503(a) of this title that is conducted in accordance with this subchapter.

(b) Sharing or receipt of cyber threat indicators

No cause of action shall lie or be maintained in any court against any private entity, and such action shall be promptly dismissed, for the sharing or receipt of a cyber threat indicator or defensive measure under section 1503(c) of this title if—

(1) such sharing or receipt is conducted in accordance with this subchapter; and

(2) in a case in which a cyber threat indicator or defensive measure is shared with the Federal Government, the cyber threat indicator or defensive measure is shared in a manner that is consistent with section 1504(c)(1)(B) of this title and the sharing or receipt, as the case may be, occurs after the earlier of—

(A) the date on which the interim policies and procedures are submitted to Congress under section 1504(a)(1) of this title and guidelines are submitted to Congress under section 1504(b)(1) of this title; or

(B) the date that is 60 days after December 18, 2015.

(c) Construction

Nothing in this subchapter shall be construed—

(1) to create—

(A) a duty to share a cyber threat indicator or defensive measure; or

(B) a duty to warn or act based on the receipt of a cyber threat indicator or defensive measure; or

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

(Pub. L. 114–113, div. N, title I, § 106, Dec. 18, 2015, 129 Stat. 2950.)

§ 1506. Oversight of government activities

(a) Report on implementation

(1) In general

Not later than 1 year after December 18, 2015, the heads of the appropriate Federal entities shall jointly submit to Congress a detailed report concerning the implementation of this subchapter.

(2) Contents

The report required by paragraph (1) may include such recommendations as the heads of the appropriate Federal entities may have for improvements or modifications to the authorities, policies, procedures, and guidelines under this subchapter and shall include the following:

(A) An evaluation of the effectiveness of real-time information sharing through the capability and process developed under section 1504(c) of this title, including any impediments to such real-time sharing.

(B) An assessment of whether cyber threat indicators or defensive measures have been properly classified and an accounting of the number of security clearances authorized by the Federal Government for the purpose of sharing cyber threat indicators or defensive measures with the private sector.

(C) The number of cyber threat indicators or defensive measures received through the capability and process developed under section 1504(c) of this title.

(D) A list of Federal entities that have received cyber threat indicators or defensive measures under this subchapter.

(b) Biennial report on compliance

(1) In general

Not later than 2 years after December 18, 2015 and not less frequently than once every 2 years thereafter, the inspectors general of the appropriate Federal entities, in consultation with the Inspector General of the Intelligence Community and the Council of Inspectors General on Financial Oversight, shall jointly submit to Congress an interagency report on the actions of the executive branch of the Federal Government to carry out this subchapter during the most recent 2-year period.

(2) Contents

Each report submitted under paragraph (1) shall include, for the period covered by the report, the following:

(A) An assessment of the sufficiency of the policies, procedures, and guidelines relating to the sharing of cyber threat indicators within the Federal Government, including those policies, procedures, and guidelines relating to the removal of information not di-

rectly related to a cybersecurity threat that is personal information of a specific individual or information that identifies a specific individual.

(B) An assessment of whether cyber threat indicators or defensive measures have been properly classified and an accounting of the number of security clearances authorized by the Federal Government for the purpose of sharing cyber threat indicators or defensive measures with the private sector.

(C) A review of the actions taken by the Federal Government based on cyber threat indicators or defensive measures shared with the Federal Government under this subchapter, including a review of the following:

(i) The appropriateness of subsequent uses and disseminations of cyber threat indicators or defensive measures.

(ii) Whether cyber threat indicators or defensive measures were shared in a timely and adequate manner with appropriate entities, or, if appropriate, were made publicly available.

(D) An assessment of the cyber threat indicators or defensive measures shared with the appropriate Federal entities under this subchapter, including the following:

(i) The number of cyber threat indicators or defensive measures shared through the capability and process developed under section 1504(c) of this title.

(ii) An assessment of any information not directly related to a cybersecurity threat that is personal information of a specific individual or information identifying a specific individual and was shared by a non-Federal government¹ entity with the Federal government¹ in contravention of this subchapter, or was shared within the Federal Government in contravention of the guidelines required by this subchapter, including a description of any significant violation of this subchapter.

(iii) The number of times, according to the Attorney General, that information shared under this subchapter was used by a Federal entity to prosecute an offense listed in section 1504(d)(5)(A) of this title.

(iv) A quantitative and qualitative assessment of the effect of the sharing of cyber threat indicators or defensive measures with the Federal Government on privacy and civil liberties of specific individuals, including the number of notices that were issued with respect to a failure to remove information not directly related to a cybersecurity threat that was personal information of a specific individual or information that identified a specific individual in accordance with the procedures required by section 1504(b)(3)(E) of this title.

(v) The adequacy of any steps taken by the Federal Government to reduce any adverse effect from activities carried out under this subchapter on the privacy and civil liberties of United States persons.

(E) An assessment of the sharing of cyber threat indicators or defensive measures

among Federal entities to identify inappropriate barriers to sharing information.

(3) Recommendations

Each report submitted under this subsection may include such recommendations as the inspectors general may have for improvements or modifications to the authorities and processes under this subchapter.

(c) Independent report on removal of personal information

Not later than 3 years after December 18, 2015, the Comptroller General of the United States shall submit to Congress a report on the actions taken by the Federal Government to remove personal information from cyber threat indicators or defensive measures pursuant to this subchapter. Such report shall include an assessment of the sufficiency of the policies, procedures, and guidelines established under this subchapter in addressing concerns relating to privacy and civil liberties.

(d) Form of reports

Each report required under this section shall be submitted in an unclassified form, but may include a classified annex.

(e) Public availability of reports

The unclassified portions of the reports required under this section shall be made available to the public.

(Pub. L. 114–113, div. N, title I, § 107, Dec. 18, 2015, 129 Stat. 2951.)

§ 1507. Construction and preemption

(a) Otherwise lawful disclosures

Nothing in this subchapter shall be construed—

(1) to limit or prohibit otherwise lawful disclosures of communications, records, or other information, including reporting of known or suspected criminal activity, by a non-Federal entity to any other non-Federal entity or the Federal Government under this subchapter; or

(2) to limit or prohibit otherwise lawful use of such disclosures by any Federal entity, even when such otherwise lawful disclosures duplicate or replicate disclosures made under this subchapter.

(b) Whistle blower protections

Nothing in this subchapter shall be construed to prohibit or limit the disclosure of information protected under section 2302(b)(8) of title 5 (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats), section 7211 of title 5 (governing disclosures to Congress), section 1034 of title 10 (governing disclosure to Congress by members of the military), section 3234 of title 50 (governing disclosure by employees of elements of the intelligence community), or any similar provision of Federal or State law.

(c) Protection of sources and methods

Nothing in this subchapter shall be construed—

(1) as creating any immunity against, or otherwise affecting, any action brought by the Federal Government, or any agency or depart-

¹ So in original. Probably should be capitalized.

ment thereof, to enforce any law, executive order, or procedure governing the appropriate handling, disclosure, or use of classified information;

(2) to affect the conduct of authorized law enforcement or intelligence activities; or

(3) to modify the authority of a department or agency of the Federal Government to protect classified information and sources and methods and the national security of the United States.

(d) Relationship to other laws

Nothing in this subchapter shall be construed to affect any requirement under any other provision of law for a non-Federal entity to provide information to the Federal Government.

(e) Prohibited conduct

Nothing in this subchapter shall be construed to permit price-fixing, allocating a market between competitors, monopolizing or attempting to monopolize a market, boycotting, or exchanges of price or cost information, customer lists, or information regarding future competitive planning.

(f) Information sharing relationships

Nothing in this subchapter shall be construed—

(1) to limit or modify an existing information sharing relationship;

(2) to prohibit a new information sharing relationship;

(3) to require a new information sharing relationship between any non-Federal entity and a Federal entity or another non-Federal entity; or

(4) to require the use of the capability and process within the Department of Homeland Security developed under section 1504(c) of this title.

(g) Preservation of contractual obligations and rights

Nothing in this subchapter shall be construed—

(1) to amend, repeal, or supersede any current or future contractual agreement, terms of service agreement, or other contractual relationship between any non-Federal entities, or between any non-Federal entity and a Federal entity; or

(2) to abrogate trade secret or intellectual property rights of any non-Federal entity or Federal entity.

(h) Anti-tasking restriction

Nothing in this subchapter shall be construed to permit a Federal entity—

(1) to require a non-Federal entity to provide information to a Federal entity or another non-Federal entity;

(2) to condition the sharing of cyber threat indicators with a non-Federal entity on such entity's provision of cyber threat indicators to a Federal entity or another non-Federal entity; or

(3) to condition the award of any Federal grant, contract, or purchase on the provision of a cyber threat indicator to a Federal entity or another non-Federal entity.

(i) No liability for non-participation

Nothing in this subchapter shall be construed to subject any entity to liability for choosing

not to engage in the voluntary activities authorized in this subchapter.

(j) Use and retention of information

Nothing in this subchapter shall be construed to authorize, or to modify any existing authority of, a department or agency of the Federal Government to retain or use any information shared under this subchapter for any use other than permitted in this subchapter.

(k) Federal preemption

(1) In general

This subchapter supersedes any statute or other provision of law of a State or political subdivision of a State that restricts or otherwise expressly regulates an activity authorized under this subchapter.

(2) State law enforcement

Nothing in this subchapter shall be construed to supersede any statute or other provision of law of a State or political subdivision of a State concerning the use of authorized law enforcement practices and procedures.

(l) Regulatory authority

Nothing in this subchapter shall be construed—

(1) to authorize the promulgation of any regulations not specifically authorized to be issued under this subchapter;

(2) to establish or limit any regulatory authority not specifically established or limited under this subchapter; or

(3) to authorize regulatory actions that would duplicate or conflict with regulatory requirements, mandatory standards, or related processes under another provision of Federal law.

(m) Authority of Secretary of Defense to respond to malicious cyber activity carried out by foreign powers

Nothing in this subchapter shall be construed to limit the authority of the Secretary of Defense under section 394 of title 10.

(n) Criminal prosecution

Nothing in this subchapter shall be construed to prevent the disclosure of a cyber threat indicator or defensive measure shared under this subchapter in a case of criminal prosecution, when an applicable provision of Federal, State, tribal, or local law requires disclosure in such case.

(Pub. L. 114–113, div. N, title I, § 108, Dec. 18, 2015, 129 Stat. 2953; Pub. L. 115–232, div. A, title XVI, § 1631(b), Aug. 13, 2018, 132 Stat. 2123.)

Editorial Notes

AMENDMENTS

2018—Subsec. (m). Pub. L. 115–232 substituted “section 394” for “section 130g”.

§ 1508. Report on cybersecurity threats

(a) Report required

Not later than 180 days after December 18, 2015, the Director of National Intelligence, in coordination with the heads of other appropriate elements of the intelligence community, shall

submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives a report on cybersecurity threats, including cyber attacks, theft, and data breaches.

(b) Contents

The report required by subsection (a) shall include the following:

(1) An assessment of the current intelligence sharing and cooperation relationships of the United States with other countries regarding cybersecurity threats, including cyber attacks, theft, and data breaches, directed against the United States and which threaten the United States national security interests and economy and intellectual property, specifically identifying the relative utility of such relationships, which elements of the intelligence community participate in such relationships, and whether and how such relationships could be improved.

(2) A list and an assessment of the countries and nonstate actors that are the primary threats of carrying out a cybersecurity threat, including a cyber attack, theft, or data breach, against the United States and which threaten the United States national security, economy, and intellectual property.

(3) A description of the extent to which the capabilities of the United States Government to respond to or prevent cybersecurity threats, including cyber attacks, theft, or data breaches, directed against the United States private sector are degraded by a delay in the prompt notification by private entities of such threats or cyber attacks, theft, and data breaches.

(4) An assessment of additional technologies or capabilities that would enhance the ability of the United States to prevent and to respond to cybersecurity threats, including cyber attacks, theft, and data breaches.

(5) An assessment of any technologies or practices utilized by the private sector that could be rapidly fielded to assist the intelligence community in preventing and responding to cybersecurity threats.

(c) Form of report

The report required by subsection (a) shall be made available in classified and unclassified forms.

(d) Intelligence community defined

In this section, the term “intelligence community” has the meaning given that term in section 3003 of title 50.

(Pub. L. 114–113, div. N, title I, § 109, Dec. 18, 2015, 129 Stat. 2955.)

§ 1509. Exception to limitation on authority of Secretary of Defense to disseminate certain information

Notwithstanding subsection (c)(3) of section 393 of title 10, the Secretary of Defense may authorize the sharing of cyber threat indicators and defensive measures pursuant to the policies, procedures, and guidelines developed or issued under this subchapter.

(Pub. L. 114–113, div. N, title I, § 110, Dec. 18, 2015, 129 Stat. 2956.)

§ 1510. Effective period

(a) In general

Except as provided in subsection (b), this subchapter and the amendments made by this subchapter shall be effective during the period beginning on December 18, 2015 and ending on September 30, 2025.

(b) Exception

With respect to any action authorized by this subchapter or information obtained pursuant to an action authorized by this subchapter, which occurred before the date on which the provisions referred to in subsection (a) cease to have effect, the provisions of this subchapter shall continue in effect.

(Pub. L. 114–113, div. N, title I, § 111, Dec. 18, 2015, 129 Stat. 2956.)

Editorial Notes

REFERENCES IN TEXT

The amendments made by this subchapter, referred to in subsec. (a), was in the original “the amendments made by this title”, meaning title I of div. N of Pub. L. 114–113, which is classified generally to this subchapter.

**SUBCHAPTER II—FEDERAL
CYBERSECURITY ENHANCEMENT**

§ 1521. Definitions

In this subchapter:

(1) Agency

The term “agency” has the meaning given the term in section 3502 of title 44.

(2) Agency information system

The term “agency information system” has the meaning given the term in section 660 of this title.

(3) Appropriate congressional committees

The term “appropriate congressional committees” means—

- (A) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (B) the Committee on Homeland Security of the House of Representatives.

(4) Cybersecurity risk; information system

The terms “cybersecurity risk” and “information system” have the meanings given those terms in section 650 of this title.

(5) Director

The term “Director” means the Director of the Office of Management and Budget.

(6) Intelligence community

The term “intelligence community” has the meaning given the term in section 3003(4) of title 50.

(7) National security system

The term “national security system” has the meaning given the term in section 11103 of title 40.

(8) Secretary

The term “Secretary” means the Secretary of Homeland Security.

(Pub. L. 114–113, div. N, title II, §222, Dec. 18, 2015, 129 Stat. 2963; Pub. L. 115–278, §2(h)(1)(D), Nov. 16, 2018, 132 Stat. 4182; Pub. L. 117–263, div. G, title LXXI, §7143(d)(1)(A), Dec. 23, 2022, 136 Stat. 3663.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle B (§§221–229) of title II of div. N of Pub. L. 114–113, which is classified principally to this subchapter. For complete classification of subtitle B to the Code, see Tables.

AMENDMENTS

2022—Par. (4). Pub. L. 117–263 substituted “section 650 of this title” for “section 659 of this title”.

2018—Par. (2). Pub. L. 115–278, §2(h)(1)(D)(i), substituted “section 660 of this title” for “section 149 of this title, as added by section 223(a)(4) of this division”.

Par. (4). Pub. L. 115–278, §2(h)(1)(D)(ii), substituted “section 659 of this title” for “section 148 of this title, as so redesignated by section 223(a)(3) of this division”.

§ 1522. Advanced internal defenses

(a) Advanced network security tools

(1) In general

The Secretary shall include, in the efforts of the Department to continuously diagnose and mitigate cybersecurity risks, advanced network security tools to improve visibility of network activity, including through the use of commercial and free or open source tools, and to detect and mitigate intrusions and anomalous activity.

(2) Development of plan

The Director shall develop and the Secretary shall implement a plan to ensure that each agency utilizes advanced network security tools, including those described in paragraph (1), to detect and mitigate intrusions and anomalous activity.

(b) Prioritizing advanced security tools

The Director and the Secretary, in consultation with appropriate agencies, shall—

- (1) review and update Government-wide policies and programs to ensure appropriate prioritization and use of network security monitoring tools within agency networks; and
- (2) brief appropriate congressional committees on such prioritization and use.

(c) Improved metrics

The Secretary, in collaboration with the Director, shall review and update the metrics used to measure security under section 3554 of title 44 to include measures of intrusion and incident detection and response times.

(d) Transparency and accountability

The Director, in consultation with the Secretary, shall increase transparency to the public on agency cybersecurity posture, including by increasing the number of metrics available on Federal Government performance websites and, to the greatest extent practicable, displaying metrics for department components, small agencies, and micro-agencies.

(e) Omitted

(f) Exception

The requirements under this section shall not apply to the Department of Defense, a national

security system, or an element of the intelligence community.

(Pub. L. 114–113, div. N, title II, §224, Dec. 18, 2015, 129 Stat. 2967.)

Editorial Notes

CODIFICATION

Section is comprised of section 224 of title II of div. N of Pub. L. 114–113. Subsec. (e) of section 224 of title II of div. N of Pub. L. 114–113 amended section 3553 of Title 44, Public Printing and Documents.

§ 1523. Federal cybersecurity requirements

(a) Implementation of Federal cybersecurity standards

Consistent with section 3553 of title 44, the Secretary, in consultation with the Director, shall exercise the authority to issue binding operational directives to assist the Director in ensuring timely agency adoption of and compliance with policies and standards promulgated under section 11331 of title 40¹ for securing agency information systems.

(b) Cybersecurity requirements at agencies

(1) In general

Consistent with policies, standards, guidelines, and directives on information security under subchapter II of chapter 35 of title 44 and the standards and guidelines promulgated under section 11331 of title 40 and except as provided in paragraph (2), not later than 1 year after December 18, 2015, the head of each agency shall—

(A) identify sensitive and mission critical data stored by the agency consistent with the inventory required under the first subsection (c) (relating to the inventory of major information systems) and the second subsection (c) (relating to the inventory of information systems) of section 3505 of title 44;

(B) assess access controls to the data described in subparagraph (A), the need for readily accessible storage of the data, and individuals’ need to access the data;

(C) encrypt or otherwise render indecipherable to unauthorized users the data described in subparagraph (A) that is stored on or transiting agency information systems;

(D) implement a single sign-on trusted identity platform for individuals accessing each public website of the agency that requires user authentication, as developed by the Administrator of General Services in collaboration with the Secretary; and

(E) implement identity management consistent with section 7464 of title 15, including multi-factor authentication, for—

- (i) remote access to an agency information system; and
- (ii) each user account with elevated privileges on an agency information system.

(2) Exception

The requirements under paragraph (1) shall not apply to an agency information system for which—

¹ See References in Text note below.

(A) the head of the agency has personally certified to the Director with particularity that—

(i) operational requirements articulated in the certification and related to the agency information system would make it excessively burdensome to implement the cybersecurity requirement;

(ii) the cybersecurity requirement is not necessary to secure the agency information system or agency information stored on or transiting it; and

(iii) the agency has taken all necessary steps to secure the agency information system and agency information stored on or transiting it; and

(B) the head of the agency or the designee of the head of the agency has submitted the certification described in subparagraph (A) to the appropriate congressional committees and the agency's authorizing committees.

(3) Construction

Nothing in this section shall be construed to alter the authority of the Secretary, the Director, or the Director of the National Institute of Standards and Technology in implementing subchapter II of chapter 35 of title 44. Nothing in this section shall be construed to affect the National Institute of Standards and Technology standards process or the requirement under section 3553(a)(4) of such title or to discourage continued improvements and advancements in the technology, standards, policies, and guidelines used to promote Federal information security.

(c) Exception

The requirements under this section shall not apply to the Department of Defense, a national security system, or an element of the intelligence community.

(Pub. L. 114-113, div. N, title II, §225, Dec. 18, 2015, 129 Stat. 2967.)

Editorial Notes

REFERENCES IN TEXT

The text of section 11331 of title 40, referred to in subsec. (a), was generally amended by Pub. L. 117-167, div. B, title II, §10246(f), Aug. 9, 2022, 136 Stat. 1492, so as to provide for the prescription by the Secretary of Commerce of standards and guidelines pertaining to Federal information systems.

§ 1524. Assessment; reports

(a) Definitions

In this section:

(1) Agency information

The term “agency information” has the meaning given the term in section 2213 of the Homeland Security Act of 2002 [6 U.S.C. 663].

(2) Cyber threat indicator; defensive measure

The terms “cyber threat indicator” and “defensive measure” have the meanings given those terms in section 650 of this title.

(3) Intrusion assessments

The term “intrusion assessments” means actions taken under the intrusion assessment

plan to identify and remove intruders in agency information systems.

(4) Intrusion assessment plan

The term “intrusion assessment plan” means the plan required under section 2210(b)(1) of the Homeland Security Act of 2002 [6 U.S.C. 660(b)(1)].

(5) Intrusion detection and prevention capabilities

The term “intrusion detection and prevention capabilities” means the capabilities required under section 2213(b) of the Homeland Security Act of 2002 [6 U.S.C. 663(b)].

(b) Third-party assessment

Not later than 3 years after December 18, 2015, the Comptroller General of the United States shall conduct a study and publish a report on the effectiveness of the approach and strategy of the Federal Government to securing agency information systems, including the intrusion detection and prevention capabilities and the intrusion assessment plan.

(c) Reports to Congress

(1) Intrusion detection and prevention capabilities

(A) Secretary of Homeland Security report

Not later than 6 months after December 18, 2015, and annually thereafter, the Secretary shall submit to the appropriate congressional committees a report on the status of implementation of the intrusion detection and prevention capabilities, including—

(i) a description of privacy controls;

(ii) a description of the technologies and capabilities utilized to detect cybersecurity risks in network traffic, including the extent to which those technologies and capabilities include existing commercial and noncommercial technologies;

(iii) a description of the technologies and capabilities utilized to prevent network traffic associated with cybersecurity risks from transiting or traveling to or from agency information systems, including the extent to which those technologies and capabilities include existing commercial and noncommercial technologies;

(iv) a list of the types of indicators or other identifiers or techniques used to detect cybersecurity risks in network traffic transiting or traveling to or from agency information systems on each iteration of the intrusion detection and prevention capabilities and the number of each such type of indicator, identifier, and technique;

(v) the number of instances in which the intrusion detection and prevention capabilities detected a cybersecurity risk in network traffic transiting or traveling to or from agency information systems and the number of times the intrusion detection and prevention capabilities blocked network traffic associated with cybersecurity risk; and

(vi) a description of the pilot established under section 2213(c)(5) of the Homeland

Security Act of 2002 [6 U.S.C. 663(c)(5)], including the number of new technologies tested and the number of participating agencies.

(B) OMB report

Not later than 18 months after December 18, 2015, and annually thereafter, the Director shall submit to Congress, as part of the report required under section 3553(c) of title 44, an analysis of agency application of the intrusion detection and prevention capabilities, including—

(i) a list of each agency and the degree to which each agency has applied the intrusion detection and prevention capabilities to an agency information system; and

(ii) a list by agency of—

(I) the number of instances in which the intrusion detection and prevention capabilities detected a cybersecurity risk in network traffic transiting or traveling to or from an agency information system and the types of indicators, identifiers, and techniques used to detect such cybersecurity risks; and

(II) the number of instances in which the intrusion detection and prevention capabilities prevented network traffic associated with a cybersecurity risk from transiting or traveling to or from an agency information system and the types of indicators, identifiers, and techniques used to detect such agency information systems.

(C) Chief information officer

Not earlier than 18 months after December 18, 2015, and not later than 2 years after December 18, 2015, the Federal Chief Information Officer shall review and submit to the appropriate congressional committees a report assessing the intrusion detection and intrusion prevention capabilities, including—

(i) the effectiveness of the system in detecting, disrupting, and preventing cyber-threat actors, including advanced persistent threats, from accessing agency information and agency information systems;

(ii) whether the intrusion detection and prevention capabilities, continuous diagnostics and mitigation, and other systems deployed under subtitle D¹ of title II of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.) are effective in securing Federal information systems;

(iii) the costs and benefits of the intrusion detection and prevention capabilities, including as compared to commercial technologies and tools and including the value of classified cyber threat indicators; and

(iv) the capability of agencies to protect sensitive cyber threat indicators and defensive measures if they were shared through unclassified mechanisms for use in commercial technologies and tools.

¹ See References in Text note below.

(2) OMB report on development and implementation of intrusion assessment plan, advanced internal defenses, and Federal cybersecurity requirements

The Director shall—

(A) not later than 6 months after December 18, 2015, and 30 days after any update thereto, submit the intrusion assessment plan to the appropriate congressional committees;

(B) not later than 1 year after December 18, 2015, and annually thereafter, submit to Congress, as part of the report required under section 3553(c) of title 44—

(i) a description of the implementation of the intrusion assessment plan;

(ii) the findings of the intrusion assessments conducted pursuant to the intrusion assessment plan;

(iii) a description of the advanced network security tools included in the efforts to continuously diagnose and mitigate cybersecurity risks pursuant to section 1522(a)(1) of this title; and

(iv) a list by agency of compliance with the requirements of section 1523(b) of this title; and

(C) not later than 1 year after December 18, 2015, submit to the appropriate congressional committees—

(i) a copy of the plan developed pursuant to section 1522(a)(2) of this title; and

(ii) the improved metrics developed pursuant to section 1522(c) of this title.

(d) Form

Each report required under this section shall be submitted in unclassified form, but may include a classified annex.

(Pub. L. 114–113, div. N, title II, § 226, Dec. 18, 2015, 129 Stat. 2969; Pub. L. 115–278, § 2(h)(1)(F), Nov. 16, 2018, 132 Stat. 4182; Pub. L. 117–263, div. G, title LXXI, § 7143(d)(1)(B), Dec. 23, 2022, 136 Stat. 3663.)

Editorial Notes

REFERENCES IN TEXT

Subtitle D of title II of the Homeland Security Act of 2002, referred to in subsec. (c)(1)(C)(ii), is subtitle D (§§ 231–237) of title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2159, which enacted part D (§161 et seq.) of subchapter II of chapter 1 of this title and amended sections 10102 and 10122 of Title 34, Crime Control and Law Enforcement. Subtitle D was redesignated subtitle C of title II of the Homeland Security Act of 2002 by Pub. L. 115–278, § 2(g)(2)(K), Nov. 16, 2018, 132 Stat. 4178, and is classified principally to part C (§161 et seq.) of subchapter II of chapter 1 of this title. For complete classification of subtitle C to the Code, see Tables.

AMENDMENTS

2022—Subsec. (a)(2). Pub. L. 117–263 substituted “section 650 of this title” for “section 1501 of this title”.

2018—Subsec. (a)(1). Pub. L. 115–278, § 2(h)(1)(F)(i)(I), substituted “section 2213” for “section 230” and struck out before period at end “, as added by section 223(a)(6) of this division”.

Subsec. (a)(4). Pub. L. 115–278, § 2(h)(1)(F)(i)(II), substituted “section 2210(b)(1)” for “section 228(b)(1)” and struck out before period at end “, as added by section 223(a)(4) of this division”.

Subsec. (a)(5). Pub. L. 115–278, § 2(h)(1)(F)(i)(III), substituted “section 2213(b)” for “section 230(b)” and

struck out before period at end “, as added by section 223(a)(6) of this division”.

Subsec. (c)(1)(A)(vi). Pub. L. 115–278, §2(h)(1)(F)(ii), substituted “section 2213(c)(5)” for “section 230(c)(5)” and struck out “, as added by section 223(a)(6) of this division” after “Homeland Security Act of 2002”.

§ 1525. Termination

(a) In general

The authority provided under section 663 of this title, and the reporting requirements under section 1524(c) of this title shall terminate on September 30, 2023.

(b) Rule of construction

Nothing in subsection (a) shall be construed to affect the limitation of liability of a private entity for assistance provided to the Secretary under section 663(d)(2)¹ of this title, if such assistance was rendered before the termination date under subsection (a) or otherwise during a period in which the assistance was authorized.

(Pub. L. 114–113, div. N, title II, §227, Dec. 18, 2015, 129 Stat. 2971; Pub. L. 115–278, §2(h)(1)(G), Nov. 16, 2018, 132 Stat. 4182; Pub. L. 117–328, div. O, title I, §101, Dec. 29, 2022, 136 Stat. 5226.)

Editorial Notes

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–328 substituted “September 30, 2023” for “the date that is 7 years after December 18, 2015”.

2018—Subsec. (a). Pub. L. 115–278, §2(h)(1)(G)(i), substituted “section 663 of this title” for “section 151 of this title, as added by section 223(a)(6) of this division,”.

Subsec. (b). Pub. L. 115–278, §2(h)(1)(G)(ii), substituted “section 663(d)(2) of this title” for “section 151(d)(2) of this title, as added by section 223(a)(6) of this division,”.

§ 1526. Inventory of cryptographic systems; migration to post-quantum cryptography

(a) Inventory

(1) Establishment

Not later than 180 days after December 21, 2022, the Director of OMB, in coordination with the National Cyber Director and in consultation with the Director of CISA, shall issue guidance on the migration of information technology to post-quantum cryptography, which shall include at a minimum—

(A) a requirement for each agency to establish and maintain a current inventory of information technology in use by the agency that is vulnerable to decryption by quantum computers, prioritized using the criteria described in subparagraph (B);

(B) criteria to allow agencies to prioritize their inventory efforts; and

(C) a description of the information required to be reported pursuant to subsection (b).

(2) Additional content in guidance

In the guidance established by paragraph (1), the Director of OMB shall include, in addition to the requirements described in that paragraph—

(A) a description of information technology to be prioritized for migration to post-quantum cryptography; and

(B) a process for evaluating progress on migrating information technology to post-quantum cryptography, which shall be automated to the greatest extent practicable.

(3) Periodic updates

The Director of OMB shall update the guidance required under paragraph (1) as the Director of OMB determines necessary, in coordination with the National Cyber Director and in consultation with the Director of CISA.

(b) Agency reports

Not later than 1 year after December 21, 2022, and on an ongoing basis thereafter, the head of each agency shall provide to the Director of OMB, the Director of CISA, and the National Cyber Director—

(1) the inventory described in subsection (a)(1); and

(2) any other information required to be reported under subsection (a)(1)(C).

(c) Migration and assessment

Not later than 1 year after the date on which the Director of NIST has issued post-quantum cryptography standards, the Director of OMB shall issue guidance requiring each agency to—

(1) prioritize information technology described under subsection (a)(2)(A) for migration to post-quantum cryptography; and

(2) develop a plan to migrate information technology of the agency to post-quantum cryptography consistent with the prioritization under paragraph (1).

(d) Interoperability

The Director of OMB shall ensure that the prioritizations made under subsection (c)(1) are assessed and coordinated to ensure interoperability.

(e) Office of Management and Budget reports

(1) Report on post-quantum cryptography

Not later than 15 months after December 21, 2022, the Director of OMB, in coordination with the National Cyber Director and in consultation with the Director of CISA, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives a report on the following:

(A) A strategy to address the risk posed by the vulnerabilities of information technology of agencies to weakened encryption due to the potential and possible capability of a quantum computer to breach that encryption.

(B) An estimate of the amount of funding needed by agencies to secure the information technology described in subsection (a)(1)(A) from the risk posed by an adversary of the United States using a quantum computer to breach the encryption of the information technology.

(C) A description of Federal civilian executive branch coordination efforts led by the National Institute of Standards and Tech-

¹ So in original. Probably should be “663(c)(2)”.

nology, including timelines, to develop standards for post-quantum cryptography, including any Federal Information Processing Standards developed under chapter 35 of title 44, as well as standards developed through voluntary, consensus standards bodies such as the International Organization for Standardization.

(2) Report on migration to post-quantum cryptography in information technology

Not later than 1 year after the date on which the Director of OMB issues guidance under subsection (c)(2), and thereafter until the date that is 5 years after the date on which post-quantum cryptographic standards are issued, the Director of OMB, in coordination with the National Cyber Director and in consultation with the Director of CISA, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives, with the report submitted pursuant to section 3553(c) of title 44, a report on the progress of agencies in adopting post-quantum cryptography standards.

(Pub. L. 117–260, § 4, Dec. 21, 2022, 136 Stat. 2390.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Quantum Computing Cybersecurity Preparedness Act, and not as part of the Cybersecurity Act of 2015 which comprises this chapter.

Statutory Notes and Related Subsidiaries

FINDINGS; SENSE OF CONGRESS

Pub. L. 117–260, § 2, Dec. 21, 2022, 136 Stat. 2389, provided that:

“(a) FINDINGS.—Congress finds the following:

“(1) Cryptography is essential for the national security of the United States and the functioning of the economy of the United States.

“(2) The most widespread encryption protocols today rely on computational limits of classical computers to provide cybersecurity.

“(3) Quantum computers might one day have the ability to push computational boundaries, allowing us to solve problems that have been intractable thus far, such as integer factorization, which is important for encryption.

“(4) The rapid progress of quantum computing suggests the potential for adversaries of the United States to steal sensitive encrypted data today using classical computers, and wait until sufficiently powerful quantum systems are available to decrypt it.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) a strategy for the migration of information technology of the Federal Government to post-quantum cryptography is needed; and

“(2) the governmentwide and industrywide approach to post-quantum cryptography should prioritize developing applications, hardware intellectual property, and software that can be easily updated to support cryptographic agility.”

EXEMPTION OF NATIONAL SECURITY SYSTEMS

Pub. L. 117–260, § 5, Dec. 21, 2022, 136 Stat. 2392, provided that: “This Act [see Short Title of 2022 Amendment note set out under section 1500 of this title] shall not apply to any national security system.”

DEFINITIONS

Pub. L. 117–260, § 3, Dec. 21, 2022, 136 Stat. 2389, provided that: “In this Act [see Short Title of 2022 Amendment note set out under section 1500 of this title]:

“(1) AGENCY.—The term ‘agency’—

“(A) means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

“(B) does not include—

“(i) the Government Accountability Office; or

“(ii) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions.

“(2) CLASSICAL COMPUTER.—The term ‘classical computer’ means a device that accepts digital data and manipulates the information based on a program or sequence of instructions for how data is to be processed and encodes information in binary bits that can either be 0s or 1s.

“(3) DIRECTOR OF CISA.—The term ‘Director of CISA’ means the Director of the Cybersecurity and Infrastructure Security Agency.

“(4) DIRECTOR OF NIST.—The term ‘Director of NIST’ means the Director of the National Institute of Standards and Technology.

“(5) DIRECTOR OF OMB.—The term ‘Director of OMB’ means the Director of the Office of Management and Budget.

“(6) INFORMATION TECHNOLOGY.—The term ‘information technology’ has the meaning given the term in section 3502 of title 44, United States Code.

“(7) NATIONAL SECURITY SYSTEM.—The term ‘national security system’ has the meaning given the term in section 3552 of title 44, United States Code.

“(8) POST-QUANTUM CRYPTOGRAPHY.—The term ‘post-quantum cryptography’ means those cryptographic algorithms or methods that are assessed not to be specifically vulnerable to attack by either a quantum computer or classical computer.

“(9) QUANTUM COMPUTER.—The term ‘quantum computer’ means a computer that uses the collective properties of quantum states, such as superposition, interference, and entanglement, to perform calculations.”

SUBCHAPTER III—OTHER CYBER MATTERS

§ 1531. Apprehension and prosecution of international cyber criminals

(a) International cyber criminal defined

In this section, the term “international cyber criminal” means an individual—

(1) who is believed to have committed a cybercrime or intellectual property crime against the interests of the United States or the citizens of the United States; and

(2) for whom—

(A) an arrest warrant has been issued by a judge in the United States; or

(B) an international wanted notice (commonly referred to as a “Red Notice”) has been circulated by Interpol.

(b) Consultations for noncooperation

The Secretary of State, or designee, shall consult with the appropriate government official of each country from which extradition is not likely due to the lack of an extradition treaty with the United States or other reasons, in which one or more international cyber criminals are physically present, to determine what actions the government of such country has taken—

(1) to apprehend and prosecute such criminals; and

(2) to prevent such criminals from carrying out cybercrimes or intellectual property crimes against the interests of the United States or its citizens.

(c) Annual report

(1) In general

The Secretary of State shall submit to the appropriate congressional committees an annual report that includes—

(A) the number of international cyber criminals located in other countries, disaggregated by country, and indicating from which countries extradition is not likely due to the lack of an extradition treaty with the United States or other reasons;

(B) the nature and number of significant discussions by an official of the Department of State on ways to thwart or prosecute international cyber criminals with an official of another country, including the name of each such country; and

(C) for each international cyber criminal who was extradited to the United States during the most recently completed calendar year—

(i) his or her name;

(ii) the crimes for which he or she was charged;

(iii) his or her previous country of residence; and

(iv) the country from which he or she was extradited into the United States.

(2) Form

The report required by this subsection shall be in unclassified form to the maximum extent possible, but may include a classified annex.

(3) Appropriate congressional committees

For purposes of this subsection, the term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations, the Committee on Appropriations, the Committee on Homeland Security and Governmental Affairs, the Committee on Banking, Housing, and Urban Affairs, the Select Committee on Intelligence, and the Committee on the Judiciary of the Senate; and

(B) the Committee on Foreign Affairs, the Committee on Appropriations, the Committee on Homeland Security, the Committee on Financial Services, the Permanent Select Committee on Intelligence, and the Committee on the Judiciary of the House of Representatives.

(Pub. L. 114–113, div. N, title IV, § 403, Dec. 18, 2015, 129 Stat. 2979.)

§ 1532. Enhancement of emergency services

(a) Collection of data

Not later than 90 days after December 18, 2015, the Secretary of Homeland Security, acting through the center established under section 659 of this title, in coordination with appropriate Federal entities and the Assistant Director for Emergency Communications, shall establish a process by which a Statewide Interoperability Coordinator may report data on any

cybersecurity risk or incident involving any information system or network used by emergency response providers (as defined in section 101 of this title) within the State.

(b) Analysis of data

Not later than 1 year after December 18, 2015, the Secretary of Homeland Security, acting through the Director of the National Cybersecurity and Communications Integration Center, in coordination with appropriate entities and the Assistant Director for Emergency Communications, and in consultation with the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology, shall conduct integration and analysis of the data reported under subsection (a) to develop information and recommendations on security and resilience measures for any information system or network used by State emergency response providers.

(c) Best practices

(1) In general

Using the results of the integration and analysis conducted under subsection (b), and any other relevant information, the Director of the National Institute of Standards and Technology shall, on an ongoing basis, facilitate and support the development of methods for reducing cybersecurity risks to emergency response providers using the process described in section 272(e) of title 15.

(2) Report

The Director of the National Institute of Standards and Technology shall submit to Congress a report on the result of the activities of the Director under paragraph (1), including any methods developed by the Director under such paragraph, and shall make such report publicly available on the website of the National Institute of Standards and Technology.

(d) Rule of construction

Nothing in this section shall be construed to—

(1) require a State to report data under subsection (a); or

(2) require a non-Federal entity (as defined in section 1501 of this title) to—

(A) adopt a recommended measure developed under subsection (b); or

(B) follow the result of the activities carried out under subsection (c), including any methods developed under such subsection.

(Pub. L. 114–113, div. N, title IV, § 404, Dec. 18, 2015, 129 Stat. 2980; Pub. L. 115–278, § 2(h)(1)(H), Nov. 16, 2018, 132 Stat. 4183.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–278, § 2(h)(1)(H), substituted “section 659 of this title” for “section 148 of this title, as redesignated by section 223(a)(3) of this division,” and “Assistant Director for Emergency Communications” for “Director for Emergency Communications”.

Subsec. (b). Pub. L. 115–278, § 2(h)(1)(H)(ii), substituted “Assistant Director for Emergency Communications” for “Director for Emergency Communications”.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Reference to the Assistant Director for Emergency Communications deemed to be a reference to the Executive Assistant Director for Emergency Communications, see section 571(g) of this title, enacted Jan. 1, 2021.

§ 1533. Improving cybersecurity in the health care industry

(a) Definitions

In this section:

(1) Appropriate congressional committees

The term “appropriate congressional committees” means—

(A) the Committee on Health, Education, Labor, and Pensions, the Committee on Homeland Security and Governmental Affairs, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Energy and Commerce, the Committee on Homeland Security, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) Business associate

The term “business associate” has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations (as in effect on the day before December 18, 2015).

(3) Covered entity

The term “covered entity” has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations (as in effect on the day before December 18, 2015).

(4) Cybersecurity threat; cyber threat indicator; defensive measure; Federal entity; non-Federal entity; private entity

The terms “cybersecurity threat”, “cyber threat indicator”, “defensive measure”, “Federal entity”, “non-Federal entity”, and “private entity” have the meanings given such terms in section 1501 of this title.

(5) Health care clearinghouse; health care provider; health plan

The terms “health care clearinghouse”, “health care provider”, and “health plan” have the meanings given such terms in section 160.103 of title 45, Code of Federal Regulations (as in effect on the day before December 18, 2015).

(6) Health care industry stakeholder

The term “health care industry stakeholder” means any—

(A) health plan, health care clearinghouse, or health care provider;

(B) advocate for patients or consumers;

(C) pharmacist;

(D) developer or vendor of health information technology;

(E) laboratory;

(F) pharmaceutical or medical device manufacturer; or

(G) additional stakeholder the Secretary determines necessary for purposes of subsection (b)(1), (c)(1), (c)(3), or (d)(1).

(7) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(b) Report

(1) In general

Not later than 1 year after December 18, 2015, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the preparedness of the Department of Health and Human Services and health care industry stakeholders in responding to cybersecurity threats.

(2) Contents of report

With respect to the internal response of the Department of Health and Human Services to emerging cybersecurity threats, the report under paragraph (1) shall include—

(A) a clear statement of the official within the Department of Health and Human Services to be responsible for leading and coordinating efforts of the Department regarding cybersecurity threats in the health care industry; and

(B) a plan from each relevant operating division and subdivision of the Department of Health and Human Services on how such division or subdivision will address cybersecurity threats in the health care industry, including a clear delineation of how each such division or subdivision will divide responsibility among the personnel of such division or subdivision and communicate with other such divisions and subdivisions regarding efforts to address such threats.

(c) Health care industry cybersecurity task force

(1) In general

Not later than 90 days after December 18, 2015, the Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Secretary of Homeland Security, shall convene health care industry stakeholders, cybersecurity experts, and any Federal agencies or entities the Secretary determines appropriate to establish a task force to—

(A) analyze how industries, other than the health care industry, have implemented strategies and safeguards for addressing cybersecurity threats within their respective industries;

(B) analyze challenges and barriers private entities (excluding any State, tribal, or local government) in the health care industry face securing themselves against cyber attacks;

(C) review challenges that covered entities and business associates face in securing networked medical devices and other software or systems that connect to an electronic health record;

(D) provide the Secretary with information to disseminate to health care industry stakeholders of all sizes for purposes of improving their preparedness for, and response to, cybersecurity threats affecting the health care industry;

(E) establish a plan for implementing subchapter I of this chapter, so that the Federal

Government and health care industry stakeholders may in real time, share actionable cyber threat indicators and defensive measures; and

(F) report to the appropriate congressional committees on the findings and recommendations of the task force regarding carrying out subparagraphs (A) through (E).

(2) Termination

The task force established under this subsection shall terminate on the date that is 1 year after the date on which such task force is established.

(3) Dissemination

Not later than 60 days after the termination of the task force established under this subsection, the Secretary shall disseminate the information described in paragraph (1)(D) to health care industry stakeholders in accordance with such paragraph.

(d) Aligning health care industry security approaches

(1) In general

The Secretary shall establish, through a collaborative process with the Secretary of Homeland Security, health care industry stakeholders, the Director of the National Institute of Standards and Technology, and any Federal entity or non-Federal entity the Secretary determines appropriate, a common set of voluntary, consensus-based, and industry-led guidelines, best practices, methodologies, procedures, and processes that—

(A) serve as a resource for cost-effectively reducing cybersecurity risks for a range of health care organizations;

(B) support voluntary adoption and implementation efforts to improve safeguards to address cybersecurity threats;

(C) are consistent with—

(i) the standards, guidelines, best practices, methodologies, procedures, and processes developed under section 272(c)(15) of title 15;

(ii) the security and privacy regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note); and

(iii) the provisions of the Health Information Technology for Economic and Clinical Health Act (title XIII of division A, and title IV of division B, of Public Law 111-5), and the amendments made by such Act; and

(D) are updated on a regular basis and applicable to a range of health care organizations.

(2) Limitation

Nothing in this subsection shall be interpreted as granting the Secretary authority to—

(A) provide for audits to ensure that health care organizations are in compliance with this subsection; or

(B) mandate, direct, or condition the award of any Federal grant, contract, or purchase, on compliance with this subsection.

(3) No liability for nonparticipation

Nothing in this section shall be construed to subject a health care industry stakeholder to liability for choosing not to engage in the voluntary activities authorized or guidelines developed under this subsection.

(e) Incorporating ongoing activities

In carrying out the activities under this section, the Secretary may incorporate activities that are ongoing as of the day before December 18, 2015 and that are consistent with the objectives of this section.

(f) Rule of construction

Nothing in this section shall be construed to limit the antitrust exemption under section 1503(e) of this title or the protection from liability under section 1505 of this title.

(Pub. L. 114-113, div. N, title IV, § 405, Dec. 18, 2015, 129 Stat. 2981.)

Editorial Notes

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to subsec. (d)(1)(C)(ii), is section 264(c) of Pub. L. 104-191, which is set out as a note under section 1320d-2 of Title 42, The Public Health and Welfare.

The Health Information Technology for Economic and Clinical Health Act, referred to in subsec. (d)(1)(C)(iii), is title XIII of div. A and title IV of div. B of Pub. L. 111-5, Feb. 17, 2009, 123 Stat. 226, 467, also known as the HITECH Act. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 201 of Title 42, The Public Health and Welfare, and Tables.

§ 1534. Cybercrime

Subject to the availability of appropriations, and in accordance with the comparable level of the General Schedule, the Attorney General and the Secretary of Homeland Security shall provide incentive pay, in an amount that is not more than 25 percent of the basic pay of the individual, to an individual appointed to a position in the Department of Justice (including the Federal Bureau of Investigation) or the Department of Homeland Security (including positions in Homeland Security Investigations), respectively, requiring significant cyber skills, including to aid in—

(1) the protection of trafficking victims;

(2) the prevention of trafficking in persons; or

(3) the prosecution of technology-facilitated crimes against children by buyers or traffickers in persons.

(Pub. L. 117-347, title IV, § 401, Jan. 5, 2023, 136 Stat. 6207.)

Editorial Notes

REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as part of the Abolish Trafficking Reauthorization Act of 2022, and not as part of

the Cybersecurity Act of 2015 which comprises this chapter.