operations in the information environment as determined pursuant to the information operations posture review under paragraph (1)(B).

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

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

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

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

''(h) REPORT.—

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

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

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

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

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

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

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

''(i) DEFINITIONS.—In this section:

''(1) The terms 'foreign power' and 'United States person' have the meanings given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

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

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

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

''(B) is to be carried out—

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

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

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

''(iv) in support of military operations short of hostilities and in areas where hostilities are not occurring for the purpose of preparation of the environment, influence, force protection, and deterrence.''

[Amendment by Pub. L. 116–283, §1749(b), to section 1631(g) of Pub. L. 116–92, set out above, was executed to reflect the probable intent of Congress, notwithstanding errors in the directory language.]

[Pub. L. 116–283, div. A, title X, §1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(6) of Pub. L. 116–283 to section 1631(i) of Pub. L. 116–92, set out above, is effective as of Dec. 20, 2020 (probably should be Dec. 20, 2019) and as if included in Pub. L. 116–92.]

§ 398. Military information support operations in information environment

(a) CONGRESSIONAL NOTIFICATION REQUIREMENT.—(1) Not later than 48 hours after the execution of any new military information support operation plan (in this section referred to as a ''MISO plan'') approved by the commander of a combatant command, or any change in scope of any existing MISO plan, including any underlying MISO supporting plan, the Secretary of Defense shall promptly submit to the congressional defense committees notice in writing of such approval or execution of change in scope.

(2) A notification under paragraph (1) with respect to a MISO plan shall include each of the following:

(A) A description of the military information support operation program (in this section referred to as a ''MISO program'') supported by the MISO plan.

(B) A description of the objectives of the MISO plan.

(C) A description of the intended target audience for military information support operation activities under the MISO plan.

(D) A description of the tactics, techniques, and procedures to be used in executing the MISO plan.

(E) A description of the personnel engaged in supporting or facilitating the operation.

(F) The amount of funding anticipated to be obligated and expended to execute the MISO plan during the current and subsequent fiscal years.

(G) The expected duration and desired outcome of the MISO plan.

(H) Any other elements the Secretary determines appropriate.

(3) To the maximum extent practicable, the Secretary shall ensure that the congressional defense committees are notified promptly of any unauthorized disclosure of a clandestine military support operation covered by this section. A notification under this subsection may be verbal or written, but in the event of a verbal notification, the Secretary shall provide a written notification by not later than 48 hours after the provision of the verbal notification.

(b) ANNUAL REPORT.—Not later than 90 days after the last day of any fiscal year during which the Secretary conducts a MISO plan, the Secretary shall submit to the congressional defense committees a report on all such MISO plans conducted during such fiscal year. Such report shall include each of the following:

(1) A list of each MISO program and the combatant command responsible for the program.

(2) For each MISO plan—

(A) a description of the plan and any supporting plans, including the objectives for the plan;

(B) a description of the intended target audience for the activities carried out under the plan and the means of distribution; and

(C) the cost of executing the plan.

(c) PROHIBITION ON CLANDESTINE OPERATIONS DESIGNED TO INFLUENCE OPINIONS AND POLITICS IN UNITED STATES.—None of the funds authorized to be appropriated or otherwise made available for the Department of Defense for any fiscal year may be used to conduct a clandestine military information support operation that is designed to influence—

(1) any political process taking place in the United States;

(2) the opinions of United States persons;

(3) United States policies; or

(4) media produced by United States entities for United States persons.

(Added Pub. L. 117–263, div. A, title X, § 1052(a), Dec. 23, 2022, 136 Stat. 2776.)

Editorial Notes

CODIFICATION

Another section 398 was renumbered section 398a of this title.

§ 398a. Pilot program for sharing cyber capabilities and related information with foreign operational partners

(a) AUTHORITY TO ESTABLISH PILOT PROGRAM TO SHARE CYBER CAPABILITIES.—The Secretary of Defense may, with the concurrence of the Secretary of State, provide cyber capabilities and related information developed or procured by the Department of Defense to foreign countries or organizations described in subsection (b) without compensation, to meet operational imperatives if the Secretary of Defense determines that the provision of such cyber capabilities is in the national security interests of the United States.

(b) LIST OF FOREIGN COUNTRIES.—The Secretary of Defense, with the concurrence of the Secretary of State, shall—

(1) establish—

(A) a list of foreign countries that the Secretary of Defense considers suitable for sharing of cyber capabilities and related information under the authority established under subsection (a); and

(B) criteria for establishing the list under subparagraph (A);

(2) not later than 14 days after establishing the list required by paragraph (1), submit to the appropriate committees of Congress such list; and

(3) notify the appropriate committees of Congress in writing of any changes to the list established under paragraph (1) at least 14 days prior to the adoption of any such changes.

(c) PROCEDURES.—Prior to the first use of the authority provided by subsection (a), the Secretaries of Defense and State shall—

(1) establish and submit to the appropriate committees of Congress procedures for a coordination process for subsection (a) that is consistent with the operational timelines required to support the national security of the United States; and

(2) notify the appropriate committees of Congress in writing of any changes to the procedures established under paragraph (1) at least 14 days prior to the adoption of any such changes.

(d) NOTIFICATION REQUIRED.—(1) The Secretary of Defense and Secretary of State jointly shall promptly submit to the appropriate committees of Congress notice in writing of any use of the authority provided by subsection (a) no later than 48 hours following the use of the authority.

(2) Notification under paragraph (1) shall include a certification that the provision of the cyber capabilities was in the national security interests of the United States.

(3) The notification under paragraph (1) shall include an analysis of whether the transfer and the underlying operational imperative could have been met using another authority.

(e) TERMINATION.—The authority established under subsection (a) shall terminate on the date that is 3 years after the date on which this authority becomes law.

(f) PERFORMANCE METRICS.—(1) The Secretary of Defense shall maintain performance metrics to track the results of sharing cyber capabilities and related information with foreign operational partners under a pilot program authorized by subsection (a).

(2) The performance metrics under paragraph (1) shall include the following:

(A) Whom the cyber capability was used against.

(B) The effect of the cyber capability, including whether and how the transfer of the cyber capability improved the operational cyber posture of the United States and achieved operational objectives of the United States, or had no effect.

(C) Such other outcome-based or appropriate performance metrics as the Secretary considers appropriate for evaluating the effectiveness of a pilot program carried out under subsection (a).

(g) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the congressional defense committees;

(B) the Committee on Foreign Relations of the Senate; and

(C) Committee on Foreign Affairs of the House of Representatives.

(2) The term ''cyber capability'' means a device or computer program, including any combination of software, firmware, or hardware, designed to create an effect in or through cyberspace.

(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as amending, diminishing, or otherwise impacting reporting or other obligations under the War Powers Resolution.

(Added Pub. L. 117–263, div. A, title XV, § 1551(a), Dec. 23, 2022, 136 Stat. 2918, § 398; renumbered