

Statutory Notes and Related SubsidiariesNOTICE REGARDING MECHANISMS TO COORDINATE
THREATS

Pub. L. 116-260, div. U, title VI, §602(d), Dec. 27, 2020, 134 Stat. 2295, provided that: “The Secretary of Homeland Security shall provide written notification to and brief the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives on any changes to or introductions of new mechanisms to coordinate threats across the Department of Homeland Security.”

§ 124n. Protection of certain facilities and assets from unmanned aircraft**(a) Authority**

Notwithstanding section 46502 of title 49 or sections 32, 1030, 1367 and chapters 119 and 206 of title 18, the Secretary and the Attorney General may, for their respective Departments, take, and may authorize personnel with assigned duties that include the security or protection of people, facilities, or assets, to take such actions as are described in subsection (b)(1) that are necessary to mitigate a credible threat (as defined by the Secretary or the Attorney General, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset.

(b) Actions described**(1) In general**

The actions authorized in subsection (a) are the following:

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

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

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

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

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

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

(2) Required coordination

The Secretary and the Attorney General shall develop for their respective Departments

the actions described in paragraph (1) in coordination with the Secretary of Transportation.

(3) Research, testing, training, and evaluation

The Secretary and the Attorney General shall conduct research, testing, training on, and evaluation of any equipment, including any electronic equipment, to determine its capability and utility prior to the use of any such technology for any action described in subsection (b)(1).

(4) Coordination

The Secretary and the Attorney General shall coordinate with the Administrator of the Federal Aviation Administration when any action authorized by this section might affect aviation safety, civilian aviation and aerospace operations, aircraft airworthiness, or the use of the airspace.

(c) Forfeiture

Any unmanned aircraft system or unmanned aircraft described in subsection (a) that is seized by the Secretary or the Attorney General is subject to forfeiture to the United States.

(d) Regulations and guidance**(1) In general**

The Secretary, the Attorney General, and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary or the Attorney General to carry out this section.

(2) Coordination**(A) Coordination with Department of Transportation**

The Secretary and the Attorney General shall coordinate the development of their respective guidance under paragraph (1) with the Secretary of Transportation.

(B) Effect on aviation safety

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

(e) Privacy protection

The regulations or guidance issued to carry out actions authorized under subsection (b) by each Secretary or the Attorney General, as the case may be, shall ensure that—

(1) the interception or acquisition of, or access to, or maintenance or use of, communications to or from an unmanned aircraft system under this section is conducted in a manner consistent with the First and Fourth Amendments to the Constitution of the United States and applicable provisions of Federal law;

(2) communications to or from an unmanned aircraft system are intercepted or acquired only to the extent necessary to support an action described in subsection (b)(1);

(3) records of such communications are maintained only for as long as necessary, and

in no event for more than 180 days, unless the Secretary of Homeland Security or the Attorney General determine¹ that maintenance of such records is necessary to investigate or prosecute a violation of law, directly support an ongoing security operation, is required under Federal law, or for the purpose of any litigation;

(4) such communications are not disclosed outside the Department of Homeland Security or the Department of Justice unless the disclosure—

(A) is necessary to investigate or prosecute a violation of law;

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

(C) is between the Department of Homeland Security and the Department of Justice in the course of a security or protection operation of either agency or a joint operation of such agencies; or

(D) is otherwise required by law; and

(5) to the extent necessary, the Department of Homeland Security and the Department of Justice are authorized to share threat information, which shall not include communications referred to in subsection (b), with State, local, territorial, or tribal law enforcement agencies in the course of a security or protection operation.

(f) Budget

The Secretary and the Attorney General shall submit to Congress, as a part of the homeland security or justice budget materials for each fiscal year after fiscal year 2019, a consolidated funding display that identifies the funding source for the actions described in subsection (b)(1) within the Department of Homeland Security or the Department of Justice. The funding display shall be in unclassified form, but may contain a classified annex.

(g) Semiannual briefings and notifications

(1) In general

On a semiannual basis during the period beginning 6 months after October 5, 2018, and ending on the date specified in subsection (i), the Secretary and the Attorney General shall, respectively, provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section.

(2) Requirement

Each briefing required under paragraph (1) shall be conducted jointly with the Secretary of Transportation.

(3) Content

Each briefing required under paragraph (1) shall include—

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

(B) a description of instances in which actions described in subsection (b)(1) have been taken, including all such instances that may have resulted in harm, damage, or loss to a person or to private property;

(C) a description of the guidance, policies, or procedures established to address privacy, civil rights, and civil liberties issues implicated by the actions allowed under this section, as well as any changes or subsequent efforts that would significantly affect privacy, civil rights or civil liberties;

(D) a description of options considered and steps taken to mitigate any identified impacts to the national airspace system related to the use of any system or technology, including the minimization of the use of any technology that disrupts the transmission of radio or electronic signals, for carrying out the actions described in subsection (b)(1);

(E) a description of instances in which communications intercepted or acquired during the course of operations of an unmanned aircraft system were held for more than 180 days or shared outside of the Department of Justice or the Department of Homeland Security;

(F) how the Secretary, the Attorney General, and the Secretary of Transportation have informed the public as to the possible use of authorities under this section;²

(G) how the Secretary, the Attorney General, and the Secretary of Transportation have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.

(4) Unclassified form

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

(5) Notification

Within 30 days of deploying any new technology to carry out the actions described in subsection (b)(1), the Secretary and the Attorney General shall, respectively, submit a notification to the appropriate congressional committees. Such notification shall include a description of options considered to mitigate any identified impacts to the national airspace system related to the use of any system or technology, including the minimization of the use of any technology that disrupts the transmission of radio or electronic signals, for carrying out the actions described in subsection (b)(1).

(h) Rule of construction

Nothing in this section may be construed to—

(1) vest in the Secretary or the Attorney General any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration;

(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary or the Attorney General;

(3) vest in the Secretary of Homeland Security any authority of the Attorney General;

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

² So in original. Probably should be followed by “and”.

(4) vest in the Attorney General any authority of the Secretary of Homeland Security; or

(5) provide a new basis of liability for any State, local, territorial, or tribal law enforcement officers who participate in the protection of a mass gathering identified by the Secretary or Attorney General under subsection (k)(3)(C)(iii)(II), act within the scope of their authority, and do not exercise the authority granted to the Secretary and Attorney General by this section.

(i) Termination

The authority to carry out this section with respect to a covered facility or asset specified in subsection (k)(3) shall terminate on the date that is 4 years after October 5, 2018.

(j) Scope of authority

Nothing in this section shall be construed to provide the Secretary or the Attorney General with additional authorities beyond those described in subsections (a) and (k)(3)(C)(iii).

(k) Definitions

In this section:

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

(A) the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary of the Senate; and

(B) the Committee on Homeland Security, the Committee on Transportation and Infrastructure, the Committee on Energy and Commerce, and the Committee on the Judiciary of the House of Representatives.

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

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

(A) is identified as high-risk and a potential target for unlawful unmanned aircraft activity by the Secretary or the Attorney General, in coordination with the Secretary of Transportation with respect to potentially impacted airspace, through a risk-based assessment for purposes of this section (except that in the case of the missions described in subparagraph (C)(i)(II) and (C)(iii)(I), such missions shall be presumed to be for the protection of a facility or asset that is assessed to be high-risk and a potential target for unlawful unmanned aircraft activity);

(B) is located in the United States (including the territories and possessions, territorial seas or navigable waters of the United States); and

(C) directly relates to one or more—

(i) missions authorized to be performed by the Department of Homeland Security, consistent with governing statutes, regulations, and orders issued by the Secretary, pertaining to—

(I) security or protection functions of the U.S. Customs and Border Protection, including securing or protecting facilities, aircraft, and vessels, whether moored or underway;

(II) United States Secret Service protection operations pursuant to sections 3056(a) and 3056A(a) of title 18 and the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

(III) protection of facilities pursuant to section 1315(a) of title 40;

(ii) missions authorized to be performed by the Department of Justice, consistent with governing statutes, regulations, and orders issued by the Attorney General, pertaining to—

(I) personal protection operations by—

(aa) the Federal Bureau of Investigation as specified in section 533 of title 28; and

(bb) the United States Marshals Service of Federal jurists, court officers, witnesses, and other threatened persons in the interests of justice, as specified in section 566(e)(1)(A) of title 28;

(II) protection of penal, detention, and correctional facilities and operations conducted by the Federal Bureau of Prisons; or

(III) protection of the buildings and grounds leased, owned, or operated by or for the Department of Justice, and the provision of security for Federal courts, as specified in section 566(a) of title 28;

(iii) missions authorized to be performed by the Department of Homeland Security or the Department of Justice, acting together or separately, consistent with governing statutes, regulations, and orders issued by the Secretary or the Attorney General, respectively, pertaining to—

(I) protection of a National Special Security Event and Special Event Assessment Rating event;

(II) the provision of support to State, local, territorial, or tribal law enforcement, upon request of the chief executive officer of the State or territory, to ensure protection of people and property at mass gatherings, that is limited to a specified timeframe and location, within available resources, and without delegating any authority under this section to State, local, territorial, or tribal law enforcement; or

(III) protection of an active Federal law enforcement investigation, emergency response, or security function, that is limited to a specified timeframe and location; and³

(iv) missions authorized to be performed by the United States Coast Guard, including those described in clause (iii) as directed by the Secretary, and as further set forth in section 104⁴ of title 14, and consistent with governing statutes, regulations, and orders issued by the Secretary

³So in original. Probably should be “or”.

⁴See References in Text note below.

of the Department in which the Coast Guard is operating.

(4) The terms “electronic communication”, “intercept”, “oral communication”, and “wire communication” have the meaning⁵ given those terms in section 2510 of title 18.

(5) The term “homeland security or justice budget materials”, with respect to a fiscal year, means the materials submitted to Congress by the Secretary and the Attorney General in support of the budget for that fiscal year.

(6) For purposes of subsection (a), the term “personnel” means officers and employees of the Department of Homeland Security or the Department of Justice.

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

(8) For purposes of this section, the term “risk-based assessment” includes an evaluation of threat information specific to a covered facility or asset and, with respect to potential impacts on the safety and efficiency of the national airspace system and the needs of law enforcement and national security at each covered facility or asset identified by the Secretary or the Attorney General, respectively, of each of the following factors:

(A) Potential impacts to safety, efficiency, and use of the national airspace system, including potential effects on manned aircraft and unmanned aircraft systems, aviation safety, airport operations, infrastructure, and air navigation services related to the use of any system or technology for carrying out the actions described in subsection (b)(1).

(B) Options for mitigating any identified impacts to the national airspace system related to the use of any system or technology, including minimizing when possible the use of any technology which disrupts the transmission of radio or electronic signals, for carrying out the actions described in subsection (b)(1).

(C) Potential consequences of the impacts of any actions taken under subsection (b)(1) to the national airspace system and infrastructure if not mitigated.

(D) The ability to provide reasonable advance notice to aircraft operators consistent with the safety of the national airspace system and the needs of law enforcement and national security.

(E) The setting and character of any covered facility or asset, including whether it is located in a populated area or near other structures, whether the facility is open to the public, whether the facility is also used for nongovernmental functions, and any potential for interference with wireless communications or for injury or damage to persons or property.

(F) The setting, character, timeframe, and national airspace system impacts of National Special Security Event and Special Event Assessment Rating events.

(G) Potential consequences to national security, public safety, or law enforcement if threats posed by unmanned aircraft systems are not mitigated or defeated.

(I) Department of Homeland Security assessment

(1) Report

Not later than 1 year after October 5, 2018, the Secretary shall conduct, in coordination with the Attorney General and the Secretary of Transportation, an assessment to the appropriate congressional committees, including—

(A) an evaluation of the threat from unmanned aircraft systems to United States critical infrastructure (as defined in this chapter) and to domestic large hub airports (as defined in section 40102 of title 49);

(B) an evaluation of current Federal and⁷ State, local, territorial, or tribal law enforcement authorities to counter the threat identified in subparagraph (A), and recommendations, if any, for potential changes to existing authorities to allow State, local, territorial, and tribal law enforcement to assist Federal law enforcement to counter the threat where appropriate;

(C) an evaluation of the knowledge of, efficiency of, and effectiveness of current procedures and resources available to owners of critical infrastructure and domestic large hub airports when they believe a threat from unmanned aircraft systems is present and what additional actions, if any, the Department of Homeland Security or the Department of Transportation could implement under existing authorities to assist these entities to counter the threat identified in subparagraph (A);

(D) an assessment of what, if any, additional authorities are needed by each Department and law enforcement to counter the threat identified in subparagraph (A); and

(E) an assessment of what, if any, additional research and development the Department needs to counter the threat identified in subparagraph (A).

(2) Unclassified form

The report required under paragraph (1) shall be submitted in unclassified form, but may contain a classified annex.

(Pub. L. 107–296, title II, §210G, as added Pub. L. 115–254, div. H, §1602(a), Oct. 5, 2018, 132 Stat. 3522.)

Editorial Notes

REFERENCES IN TEXT

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

Section 104 of title 14, referred to in subsec. (k)(3)(C)(iv), was redesignated section 528 of title 14 by Pub. L. 115–282, title I, §105(b), Dec. 4, 2018, 132 Stat. 4200, and references to section 104 of title 14 deemed to refer to such redesignated section, see section 123(b)(1)

⁵ So in original. Probably should be “meanings”.

⁶ So in original. The comma probably should not appear.

⁷ So in original. Probably should be “Federal.”.

of Pub. L. 115–282, set out as a References to Sections of Title 14 as Redesignated by Pub. L. 115–282 note preceding section 101 of Title 14, Coast Guard.

This chapter, referred to in subsec. (D)(1)(A), was in the original “this Act”, meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

§ 125. Annual report on intelligence activities of the Department of Homeland Security

(a) In general

For each fiscal year and along with the budget materials submitted in support of the budget of the Department of Homeland Security pursuant to section 1105(a) of title 31, the Under Secretary for Intelligence and Analysis of the Department shall submit to the congressional intelligence committees a report for such fiscal year on each intelligence activity of each intelligence component of the Department, as designated by the Under Secretary, that includes the following:

- (1) The amount of funding requested for each such intelligence activity.
- (2) The number of full-time employees funded to perform each such intelligence activity.
- (3) The number of full-time contractor employees (or the equivalent of full-time in the case of part-time contractor employees) funded to perform or in support of each such intelligence activity.
- (4) A determination as to whether each such intelligence activity is predominantly in support of national intelligence or departmental missions.
- (5) The total number of analysts of the Intelligence Enterprise of the Department that perform—
 - (A) strategic analysis; or
 - (B) operational analysis.

(b) Feasibility and advisability report

Not later than 120 days after December 19, 2014, the Secretary of Homeland Security, acting through the Under Secretary for Intelligence and Analysis, shall submit to the congressional intelligence committees a report that—

- (1) examines the feasibility and advisability of including the budget request for all intelligence activities of each intelligence component of the Department that predominantly support departmental missions, as designated by the Under Secretary for Intelligence and Analysis, in the Homeland Security Intelligence Program; and
- (2) includes a plan to enhance the coordination of department-wide intelligence activities to achieve greater efficiencies in the performance of the Department of Homeland Security intelligence functions.

(c) Intelligence component of the Department

In this section, the term “intelligence component of the Department” has the meaning given that term in section 101 of this title.

(Pub. L. 113–293, title III, §324, Dec. 19, 2014, 128 Stat. 4004.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2015, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

Statutory Notes and Related Subsidiaries

DEFINITIONS

“Congressional intelligence committees” means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, see section 2 of Pub. L. 113–293, set out as a note under section 3003 of Title 50, War and National Defense.

§ 126. Department of Homeland Security data framework

(a) In general

(1) Development

The Secretary of Homeland Security shall develop a data framework to integrate existing Department of Homeland Security datasets and systems, as appropriate, for access by authorized personnel in a manner consistent with relevant legal authorities and privacy, civil rights, and civil liberties policies and protections.

(2) Requirements

In developing the framework required under paragraph (1), the Secretary of Homeland Security shall ensure, in accordance with all applicable statutory and regulatory requirements, the following information is included:

(A) All information acquired, held, or obtained by an office or component of the Department of Homeland Security that falls within the scope of the information sharing environment, including homeland security information, terrorism information, weapons of mass destruction information, and national intelligence.

(B) Any information or intelligence relevant to priority mission needs and capability requirements of the homeland security enterprise, as determined appropriate by the Secretary.

(b) Data framework access

(1) In general

The Secretary of Homeland Security shall ensure that the data framework required under this section is accessible to employees of the Department of Homeland Security who the Secretary determines—

- (A) have an appropriate security clearance;
- (B) are assigned to perform a function that requires access to information in such framework; and
- (C) are trained in applicable standards for safeguarding and using such information.

(2) Guidance

The Secretary of Homeland Security shall—

(A) issue guidance for Department of Homeland Security employees authorized to access and contribute to the data framework pursuant to paragraph (1); and