

the Secretary of Defense shall submit to Congress a report on the proposed budgets for that fiscal year that the Assistant Secretary has not certified under paragraph (3). The report shall include the following:

(A) A discussion of the actions that the Secretary proposes to take, together with any recommended legislation that the Secretary considers appropriate, to address the inadequacy of the proposed budgets.

(B) Any additional comments that the Secretary considers appropriate regarding the inadequacy of the proposed budgets.

(5) The report required by paragraph (4) shall also include a separate statement of estimated expenditures and requested appropriations for that fiscal year for the activities of the Assistant Secretary in carrying out the duties of the Assistant Secretary.

(f) ACCESS TO INITIATIVE RESULTS AND RECORDS.—(1) The Secretary of a military department shall submit to the Assistant Secretary the results of all studies and initiatives conducted by the military department in connection with the operational energy strategy.

(2) The Assistant Secretary shall have access to all records and data in the Department of Defense (including the records and data of each military department) necessary in order to permit the Assistant Secretary to carry out the duties of the Assistant Secretary.

(g) STAFF.—The Assistant Secretary shall have a dedicated professional staff of military and civilian personnel in a number sufficient to enable the Assistant Secretary to carry out the duties and responsibilities of the Assistant Secretary.

(h) DEFINITIONS.—In this section:

(1) OPERATIONAL ENERGY.—The term “operational energy” means the energy required for training, moving, and sustaining military forces and weapons platforms for military operations. The term includes energy used by tactical power systems and generators and weapons platforms.

(2) OPERATIONAL ENERGY STRATEGY.—The terms “operational energy strategy” and “strategy” mean the operational energy strategy developed under subsection (d).

(Added Pub. L. 110-417, [div. A], title IX, § 902(a), Oct. 14, 2008, 122 Stat. 4564, § 139b; renumbered § 138c and amended Pub. L. 111-383, div. A, title IX, § 901(b)(7), (k)(1)(C), Jan. 7, 2011, 124 Stat. 4320, 4325; Pub. L. 112-81, div. A, title III, §§ 311, 314(a), Dec. 31, 2011, 125 Stat. 1351, 1357.)

AMENDMENTS

2011—Pub. L. 111-383, § 901(k)(1)(C), substituted “Assistant Secretary of Defense for Operational Energy Plans and Programs” for “Director of Operational Energy Plans and Programs” in section catchline.

Pub. L. 111-383, § 901(b)(7)(B), substituted “Assistant Secretary” for “Director” wherever appearing in text.

Pub. L. 111-383, § 901(b)(7), renumbered section 139b of this title as this section.

Subsec. (a). Pub. L. 111-383, § 901(b)(7)(A), substituted “The Assistant Secretary of Defense for Operational Energy Plans and Programs” for “There is a Director of Operational Energy Plans and Programs in the Department of Defense (in this section referred to as the ‘Director’), appointed by the President, by and with the advice and consent of the Senate. The Director”.

Subsec. (c)(3). Pub. L. 112-81, § 314(a), which directed the amendment of section 138(c) by adding par. (3) at the end thereof, was executed by making the addition at the end of subsec. (c) of this section to reflect the probable intent of Congress.

Subsec. (d)(2). Pub. L. 111-383, § 901(b)(7)(C), substituted “The Secretary of each military department” for “Not later than 90 days after the date on which the Assistant Secretary is first appointed, the Secretary of each of the military departments” and “Secretary who shall” for “Secretary who will” and inserted “so designated” after “The officials”.

Subsec. (d)(3). Pub. L. 112-81, § 311(1)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 112-81, § 311(1)(A), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Pub. L. 111-383, § 901(b)(7)(D), substituted “Updates to the strategy required by paragraph (1)” for “The initial strategy shall be submitted to the congressional defense committees not later than 180 days after the date on which the Assistant Secretary is first appointed. Subsequent updates to the strategy”.

Subsec. (d)(5). Pub. L. 112-81, § 311(1)(A), redesignated par. (4) as (5).

Subsec. (e)(4). Pub. L. 112-81, § 311(2), substituted “30 days” for “10 days”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111-383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111-383, set out as a note under section 131 of this title.

§ 138d. Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs

(a) The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall—

(1) advise the Secretary of Defense on nuclear energy, nuclear weapons, and chemical and biological defense;

(2) serve as the Staff Director of the Nuclear Weapons Council established by section 179 of this title; and

(3) perform such additional duties as the Secretary may prescribe.

(b) The Assistant Secretary may communicate views on issues within the responsibility of the Assistant Secretary directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense.

(Added Pub. L. 100-180, div. A, title XII, § 1245(a)(1), Dec. 4, 1987, 101 Stat. 1165, § 141; renumbered § 142, Pub. L. 103-160, div. A, title IX, § 901(a)(1), Nov. 30, 1993, 107 Stat. 1726; amended Pub. L. 104-106, div. A, title IX, §§ 903(c)(4), 904(a)(1), Feb. 10, 1996, 110 Stat. 402, 403; Pub. L. 104-201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 110-417, [div. A], title IX, § 905, Oct. 14, 2008, 122 Stat. 4568; renumbered § 138d and amended Pub. L. 111-383, div. A, title IX, § 901(b)(8), (k)(1)(D), Jan. 7, 2011, 124 Stat. 4320, 4325.)

AMENDMENTS

2011—Pub. L. 111-383, § 901(k)(1)(D), substituted “Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs” for “Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs” in section catchline.

Pub. L. 111-383, § 901(b)(8), renumbered section 142 of this title as this section.

Subsec. (a). Pub. L. 111-383, §901(b)(8)(A), (B), redesignated subsec. (b) as (a), substituted “The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs” for “The Assistant to the Secretary” in introductory provisions, and struck out former subsec. (a) which read as follows: “There is an Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, appointed by the President, by and with the advice and consent of the Senate.”

Subsec. (b). Pub. L. 111-383, §901(b)(8)(C), added subsec. (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 111-383, §901(b)(8)(C), struck out subsec. (c), which read as follows: “The Assistant to the Secretary shall be considered an Assistant Secretary of Defense for purposes of section 138(d) of this title.”

2008—Subsec. (c). Pub. L. 110-417 added subsec. (c).

1996—Pub. L. 104-106, §904(a)(1)(A), substituted “Nuclear and Chemical and Biological Defense Programs” for “Atomic Energy” in section catchline.

Pub. L. 104-106, §903(a), (c)(4), which directed repeal of this section eff. Jan. 31, 1997, was repealed by Pub. L. 104-201.

Subsec. (a). Pub. L. 104-106, §904(a)(1)(B), substituted “Nuclear and Chemical and Biological Defense Programs” for “Atomic Energy”.

Subsec. (b). Pub. L. 104-106, §904(a)(1)(C), added subsec. (b) and struck out former subsec. (b) which read as follows: “The Assistant to the Secretary shall advise the Secretary of Defense and the Nuclear Weapons Council on nuclear energy and nuclear weapons matters.”

1993—Pub. L. 103-160 renumbered section 141 of this title as this section.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111-383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111-383, set out as a note under section 131 of this title.

EXCEPTION TO SENATE CONFIRMATION REQUIREMENT

Pub. L. 100-180, div. A, title XII, §1245(b), Dec. 4, 1987, 101 Stat. 1165, provided that the person serving as Chairman of the Military Liaison Committee, Department of Defense, on Oct. 16, 1986, could be appointed as the Assistant to the Secretary of Defense for Atomic Energy without the advice and consent of the Senate.

§ 139. Director of Operational Test and Evaluation

(a)(1) There is a Director of Operational Test and Evaluation in the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of the office of Director. The Director may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(2) In this section:

(A) The term “operational test and evaluation” means—

(i) the field test, under realistic combat conditions, of any item of (or key component of) weapons, equipment, or munitions for the purpose of determining the effectiveness and suitability of the weapons, equipment, or munitions for use in combat by typical military users; and

(ii) the evaluation of the results of such test.

(B) The term “major defense acquisition program” means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 2430 of this title or that is designated as such a program by the Director for purposes of this section.

(b) The Director is the principal adviser to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on operational test and evaluation in the Department of Defense and the principal operational test and evaluation official within the senior management of the Department of Defense. The Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of operational test and evaluation in the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretaries of the military departments with respect to operational test and evaluation in the Department of Defense in general and with respect to specific operational test and evaluation to be conducted in connection with a major defense acquisition program;

(3) monitor and review all operational test and evaluation in the Department of Defense;

(4) coordinate operational testing conducted jointly by more than one military department or defense agency;

(5) review and make recommendations to the Secretary of Defense on all budgetary and financial matters relating to operational test and evaluation, including operational test facilities and equipment, in the Department of Defense; and

(6) monitor and review the live fire testing activities of the Department of Defense provided for under section 2366 of this title.

(c) The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense. The Director shall consult closely with, but the Director and the Director’s staff are independent of, the Under Secretary of Defense for Acquisition, Technology, and Logistics and all other officers and entities of the Department of Defense responsible for acquisition.

(d) The Director may not be assigned any responsibility for developmental test and evaluation, other than the provision of advice to officials responsible for such testing.

(e)(1) The Secretary of a military department shall report promptly to the Director the results of all operational test and evaluation conducted by the military department and of all studies conducted by the military department in connection with operational test and evaluation in the military department.

(2) The Director may require that such observers as he designates be present during the preparation for and the conduct of the test part of any operational test and evaluation conducted in the Department of Defense.

(3) The Director shall have access to all records and data in the Department of Defense