

AMENDMENTS

2016—Pub. L. 114-328, § 1662(a)(2), substituted “Control and physical protection” for “Physical protection” in section catchline.

Subsec. (d). Pub. L. 114-328, § 1662(a)(1), added subsec. (d).

2003—Subsec. (d). Pub. L. 108-136 struck out subsec. (d) which required the Secretary to prepare an annual report detailing the Secretary’s application during the year of each regulation or order prescribed or issued under this section.

1990—Subsec. (d). Pub. L. 101-510 substituted “on an annual basis” for “on a quarterly basis”.

§ 129. Civilian personnel management

(a) The civilian personnel of the Department of Defense shall be managed each fiscal year on the basis of and consistent with (1) the total force management policies and procedures established under section 129a of this title, (2) the workload required to carry out the functions and activities of the department, and (3) the funds made available to the department for such fiscal year. Any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees shall be developed on the basis of those factors and shall be subject to adjustment solely for reasons of changed circumstances. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense except in accordance with the requirements of this section and section 129a of this title.

(b) With respect to each budget activity within an appropriation for a fiscal year for operations and maintenance, the Secretary of Defense shall ensure that there are employed during that fiscal year employees in the number and with the combination of skills and qualifications that are necessary to carry out the functions within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.

(c)(1) Not later than February 1 of each year—

(A) the Secretary of Defense shall submit to the congressional defense committees a report on the management of the civilian workforce of the Office of the Secretary of Defense and the Defense Agencies and Field Activities; and

(B) the Secretary of each military department shall submit to the congressional defense committees a report on the management of the civilian workforces under the jurisdiction of such Secretary.

(2) Each report under paragraph (1) shall contain, with respect to the civilian workforce under the jurisdiction of the official submitting the report, the following:

(A) An assessment of the projected size of such civilian workforce in the current year and for each year in the future-years defense program.

(B) If the projected size of such civilian workforce has changed from the previous year’s projected size, an explanation of the reasons for the increase or decrease from the previous projection, including an explanation

of any efforts that have been taken to identify offsetting reductions and avoid unnecessary overall growth in the size of the civilian workforce.

(C) In the case of a transfer of functions between military, civilian, and contractor workforces, an explanation of the reasons for the transfer and the steps that have been taken to control the overall cost of the function to the Department.

(Added Pub. L. 97-86, title IX, § 904(a), Dec. 1, 1981, 95 Stat. 1114, § 140b; renumbered § 129, Pub. L. 99-433, title I, § 101(a)(3), Oct. 1, 1986, 100 Stat. 994; amended Pub. L. 99-661, div. A, title V, § 533, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 102-190, div. A, title III, § 312(b), Dec. 5, 1991, 105 Stat. 1335; Pub. L. 104-106, div. A, title X, § 1031, Feb. 10, 1996, 110 Stat. 428; Pub. L. 104-201, div. A, title X, § 1074(a)(1), title XVI, § 1603, Sept. 23, 1996, 110 Stat. 2658, 2735; Pub. L. 105-85, div. A, title XI, § 1101, Nov. 18, 1997, 111 Stat. 1922; Pub. L. 106-65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112-81, div. A, title IX, § 932, Dec. 31, 2011, 125 Stat. 1543; Pub. L. 114-328, div. A, title XI, § 1101(a), (b)(1), Dec. 23, 2016, 130 Stat. 2443.)

AMENDMENTS

2016—Pub. L. 114-328, § 1101(b)(1), amended section catchline generally, substituting “Civilian personnel management” for “Prohibition of certain civilian personnel management constraints”.

Subsec. (a). Pub. L. 114-328, § 1101(a)(1), in first sentence, struck out “solely” before “on the basis”, in second sentence, substituted “Any” for “The management of such personnel in any fiscal year shall not be subject to any” and inserted “shall be developed on the basis of those factors and shall be subject to adjustment solely for reasons of changed circumstances” after “employees”, and in third sentence, substituted “except in accordance with the requirements of this section and section 129a of this title.” for “unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after February 10, 1996, and that refers specifically to this subsection.”

Subsec. (b). Pub. L. 114-328, § 1101(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to the number of, and the amount of funds available to be paid to, indirectly funded Government employees of the Department of Defense.

Subsec. (c). Pub. L. 114-328, § 1101(a)(2), (4), added subsec. (c) and struck out former subsec. (c) which defined the term “indirectly funded Government employees”.

Subsecs. (d) to (f). Pub. L. 114-328, § 1101(a)(2), (3), redesignated subsec. (d) as (b) and struck out subsecs. (e) and (f) which read as follows:

“(e) Subsections (a), (b), and (c) apply to the Major Range and Test Facility Base (MRTFB) at the installation level.

“(f)(1) Not later than February 1 of each year, the Secretary of each military department and the head of each Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the management of the civilian workforce under the jurisdiction of that official.

“(2) Each report of an official under paragraph (1) shall contain the following:

“(A) The official’s certification (i) that the civilian workforce under the jurisdiction of the official is not subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees, and (ii) that, during the 12 months preceding the date on which the report is due, such workforce has not been subject to any such constraint or limitation.

“(B) A description of how the civilian workforce is managed.

“(C) A detailed description of the analytical tools used to determine civilian workforce requirements during the 12-month period referred to in subparagraph (A).”

2011—Subsec. (a). Pub. L. 112–81, §932(1), inserted “the total force management policies and procedures established under section 129a of this title, (2)” after “(1)” and substituted “department, and (3)” for “department and (2)”.

Subsec. (d). Pub. L. 112–81, §932(2), substituted “within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.” for “within that budget activity for which funds are provided for that fiscal year.”

Subsec. (e). Pub. L. 112–81, §932(3), struck out at end “With respect to the MRTFB structure, the term ‘funds made available’ includes both direct appropriated funds and funds provided by MRTFB customers.”

1999—Subsec. (f)(1). Pub. L. 106–65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1997—Subsec. (f). Pub. L. 105–85 added subsec. (f).

1996—Subsec. (a). Pub. L. 104–201, §1074(a)(1), substituted “February 10, 1996,” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996”.

Pub. L. 104–106, §1031(1), substituted “constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 and that refers specifically to this subsection.” for “man-year constraint or limitation.”

Subsec. (b)(2). Pub. L. 104–106, §1031(2), substituted “any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees” for “any end-strength”.

Subsec. (c)(1). Pub. L. 104–201, §1603(1), inserted “, the Major Range and Test Facility Base,” after “industrial-type activities”.

Subsec. (d). Pub. L. 104–106, §1031(3), added subsec. (d).

Subsec. (e). Pub. L. 104–201, §1603(2), added subsec. (e).

1991—Subsec. (a). Pub. L. 102–190 substituted “department and (2)” for “department, (2)” and struck out “, and (3) the authorized end strength for the civilian personnel of the department for such fiscal year” at end of first sentence.

1986—Pub. L. 99–661 designated existing provisions as subsec. (a) and added subssecs. (b) and (c).

Pub. L. 99–433 renumbered section 140b of this title as this section.

§ 129a. General policy for total force management

(a) **POLICIES AND PROCEDURES.**—The Secretary of Defense shall establish policies and procedures for determining the most appropriate and cost efficient mix of military, civilian, and contractor personnel to perform the mission of the Department of Defense.

(b) **RISK MITIGATION OVER COST.**—In establishing the policies and procedures under subsection (a), the Secretary shall clearly provide that attainment of a Department of Defense workforce sufficiently sized and comprised of the appropriate mix of personnel necessary to carry out the mission of the Department and the core mission areas of the armed forces takes precedence over cost.

(c) **DELEGATION OF RESPONSIBILITIES.**—The Secretary shall delegate responsibility for implementation of the policies and procedures established under subsection (a) as follows:

(1) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for guidance to implement such policies and procedures.

(2) The Secretaries of the military departments and the heads of the Defense Agencies shall have overall responsibility for the requirements determination, planning, programming, and budgeting for such policies and procedures.

(3) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for ensuring that the defense acquisition system, as defined in section 2545 of this title, is consistent with such policies and procedures and with implementation pursuant to paragraph (1).

(4) The Under Secretary of Defense (Comptroller) shall be responsible for ensuring that the budget for the Department of Defense is consistent with such policies and procedures. The Under Secretary shall notify the congressional defense committees of any deviations from such policies and procedures that are recommended in the budget.

(d) **USE OF PLAN, INVENTORY, AND LIST.**—The policies and procedures established by the Secretary under subsection (a) shall specifically require the Department of Defense to use the following when making determinations regarding the appropriate workforce mix necessary to perform its mission:

(1) The inventory of contracts for services required by section 2330a(c) of this title.

(2) The list of activities required by the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note).

(e) **CONSIDERATIONS IN CONVERTING PERFORMANCE OF FUNCTIONS.**— If conversion of functions to performance by either Department of Defense civilian personnel or contractor personnel is considered, the Under Secretary of Defense for Personnel and Readiness shall ensure compliance with—

(1) section 2463 of this title (relating to guidelines and procedures for use of civilian employees to perform Department of Defense functions); and

(2) section 2461 of this title (relating to public-private competition required before conversion to contractor performance).

(f) **CONSTRUCTION WITH OTHER REQUIREMENTS.**—Nothing in this title may be construed as authorizing—

(1) a military department or Defense Agency to directly convert a function to contractor performance without complying with section 2461 of this title;

(2) the use of contractor personnel for functions that are inherently governmental even if there is a military or civilian personnel shortfall in the Department of Defense;

(3) restrictions on the use by a military department or Defense Agency of contractor personnel to perform functions closely associated with inherently governmental functions, provided that—