

the Administration, or of a contractor of the Administration, who is carrying out activities related to intelligence or counterintelligence shall, in carrying out those activities, be subject to the authority, direction, and control of the Secretary of Energy or the Secretary's delegate. (Pub. L. 106-65, div. C, title XXXII, § 3220, formerly § 3213, Oct. 5, 1999, 113 Stat. 958; Pub. L. 106-398, § 1 [div. C, title XXXI, § 3157], Oct. 30, 2000, 114 Stat. 1654, 1654A-468; renumbered § 3220, Pub. L. 107-107, div. C, title XXXI, § 3141(a)(1), Dec. 28, 2001, 115 Stat. 1370; Pub. L. 109-364, div. C, title XXXI, § 3117(a)(2)(B), (d), Oct. 17, 2006, 120 Stat. 2507, 2508; Pub. L. 111-84, div. C, title XXXI, § 3121, Oct. 28, 2009, 123 Stat. 2710; Pub. L. 113-66, div. C, title XXXI, § 3145(b), Dec. 26, 2013, 127 Stat. 1071; Pub. L. 113-291, div. C, title XXXI, § 3143(a), Dec. 19, 2014, 128 Stat. 3902.)

CODIFICATION

Section was formerly classified to section 2403 of this title.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113-291 substituted “activities between—” for “activities between” before par. (1) designation and “; and” for “, and” at end of par. (1) and realigned margins of pars. (1) and (2).

2013—Subsecs. (a)(1)(A), (b). Pub. L. 113-66 made technical amendment to reference in original act which appears in text as reference to section 7132(c)(3) of title 42.

2009—Subsec. (e). Pub. L. 111-84 amended Pub. L. 109-364, § 3117(a). See 2006 Amendment note below.

2006—Subsec. (e). Pub. L. 109-364, § 3117(a), which, in par. (2), directed repeal of subsec. (e) effective Sept. 30, 2010, was amended generally by Pub. L. 111-84, and as so amended, no longer contains a par. (2) or amends this section.

Pub. L. 109-364, § 3117(d), added subsec. (e).

2000—Subsec. (a). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3157(1)], struck out “Administration, in carrying out any function of the” after “employee of the” in introductory provisions.

Subsec. (b). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3157(2)], struck out “, in carrying out any function of the Administration,” after “contractor of the Administration”.

Subsec. (d). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3157(3)], added subsec. (d).

EFFECTIVE DATE

Section effective Mar. 1, 2000, see section 3299 of Pub. L. 106-65, set out as a note under section 2401 of this title.

§ 2411. Director for Cost Estimating and Program Evaluation

(a) Establishment

(1) There is in the Administration a Director for Cost Estimating and Program Evaluation (in this section referred to as the “Director”).

(2) The position of the Director shall be a Senior Executive Service position (as defined in section 3132(a) of title 5).

(b) Duties

(1) The Director shall be the principal advisor to the Administrator, the Deputy Secretary of Energy, and the Secretary of Energy with respect to cost estimation and program evaluation for the Administration. The Director shall report directly to the Administrator.

(2) The Administrator may not delegate responsibility for receiving or acting on commu-

nications from the Director with respect to cost estimation and program evaluation for the Administration.

(c) Activities for cost estimation

(1) The Director shall be the responsible for the following activities relating to cost estimation:

(A) Advising the Administrator on policies and procedures for cost analysis and estimation by the Administration, including the determination of confidence levels with respect to cost estimates.

(B) Reviewing cost estimates and evaluating the performance baseline for each major atomic energy defense acquisition program.

(C) Advising the Administrator on policies and procedures for developing technology readiness assessments for major atomic energy defense acquisition programs that are consistent with the guidelines of the Department of Energy for technology readiness assessments.

(D) Reviewing technology readiness assessments for such programs to ensure that such programs are meeting levels of confidence associated with appropriate overall system performance.

(E) As directed by the Administrator, conducting independent cost estimates for such programs.

(2) A review, evaluation, or cost estimate conducted under subparagraph (B), (D), or (E) of paragraph (1) shall be considered an inherently governmental function, but the Director may use data collected by a national security laboratory or a management and operating contractor of the Administration in conducting such a review, evaluation, or cost estimate.

(3) The Director shall submit in writing to the Administrator the following:

(A) The certification of the Director with respect to each review, evaluation, and cost estimate conducted under subparagraph (B), (D), or (E) of paragraph (1).

(B) A statement of the confidence level of the Director with respect to each such review, evaluation, and cost estimate, including an identification of areas of uncertainty, risk, and opportunity discovered in conducting each such review, evaluation, and cost estimate.

(d) Activities for program evaluation

(1) The Director shall be responsible for the following activities relating to program evaluation:

(A) Reviewing and commenting on policies and procedures for setting requirements for the future-years nuclear security program under section 2453 of this title and for prioritizing and estimating the funding required by the Administration for that program.

(B) Reviewing the future-years nuclear security program on an annual basis to ensure that the program is accurate and thorough.

(C) Advising the Administrator on policies and procedures for analyses of alternatives for major atomic energy defense acquisition programs.

(D) As part of the planning, programming, and budgeting process of the Administration

under sections 2451 and 2452 of this title, analyzing the planning phase of that process, advising on programmatic and fiscal year guidance, and managing the program review phase of that process.

(E) Developing and managing the submittal of the Selected Acquisition Reports and independent cost estimates on nuclear weapons systems undergoing major life extension under section 2537 of this title.

(F) Reviewing cost and schedule baselines for projects under section 2753 of this title and managing notifications to the congressional defense committees of cost overruns under that section.

(2) A review conducted under paragraph (1)(B) shall be considered an inherently governmental function, but the Director may use data collected by a national security laboratory or a management and operating contractor of the Administration in conducting such a review.

(3) The Director shall submit to Congress a report on any major programmatic deviations from the future-years nuclear security program discovered in conducting a review under paragraph (1)(B) at or about the time the budget of the President is submitted to Congress under section 1105(a) of title 31 for the next fiscal year.

(e) Data collection and accessibility

The Administrator, acting through the Director, shall, as appropriate, seek to use procedures, processes, and policies for collecting cost data and making that data accessible that are similar to the procedures, processes, and policies used by the Defense Cost Analysis Resource Center of the Office of Cost Assessment and Program Evaluation of the Department of Defense for those purposes.

(f) Staff

The Administrator shall ensure that the Director has sufficient numbers of personnel who have competence in technical matters, budgetary matters, cost estimation, technology readiness analysis, and other appropriate matters to carry out the functions required by this section.

(g) Reports by Director

The Director shall submit to Congress at or about the time that the budget of the President is submitted to Congress pursuant to section 1105(a) of title 31 for each of fiscal years 2015 through 2018, a report that includes the following:

(1) A description of activities conducted by the Director during the calendar year preceding the submission of the report that are related to the duties and activities described in this section.

(2) A list of all major atomic energy defense acquisition programs and a concise description of the status of each such program and project in meeting cost and critical schedule milestones.

(h) Rule of Construction

Nothing in this section shall be construed to require duplicate reviews or cost estimates for major atomic energy defense acquisition programs by the Administration or other elements of the Department of Energy.

(i) Definitions

In this section:

(1) Administration

The term “Administration”, with respect to any authority, duty, or responsibility provided by this section, does not include the Office of Naval Reactors.

(2) Major atomic energy defense acquisition program

The term “major atomic energy defense acquisition program” means an atomic energy defense acquisition program of the Administration—

(A) the total project cost of which is more than \$500,000,000; or

(B) the total lifetime cost of which is more than \$1,000,000,000.

(3) Performance baseline

The term “performance baseline”, with respect to a major atomic energy defense acquisition program, means the key parameters with respect to performance, scope, cost, and schedule for the project budget of the program.

(Pub. L. 106–65, div. C, title XXXII, §3221, as added Pub. L. 113–66, div. C, title XXXI, §3112(a)(1), Dec. 26, 2013, 127 Stat. 1050; amended Pub. L. 113–291, div. C, title XXXI, §3117, Dec. 19, 2014, 128 Stat. 3889; Pub. L. 115–232, div. C, title XXXI, §3113(a), Aug. 13, 2018, 132 Stat. 2290; Pub. L. 116–92, div. C, title XXXI, §3113(a), Dec. 20, 2019, 133 Stat. 1950.)

AMENDMENTS

2019—Subsec. (b)(1). Pub. L. 116–92 inserted “The Director shall report directly to the Administrator.” at end.

2018—Subsecs. (h), (i). Pub. L. 115–232, §3113(a)(1), (2), added subsec. (h) and redesignated former subsec. (h) as (i).

Subsec. (i)(2). Pub. L. 115–232, §3113(a)(3), struck out subpar. (A) designation and heading “In general”, substituted “The term” for “Except as provided in subparagraph (B), the term”, redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, realigned margins, and struck out former subpar. (B). Prior to amendment, text of subpar. (B) read as follows: “The term ‘major atomic energy defense acquisition program’ does not include a project covered by Department of Energy Order 413.3 (or a successor order) for the acquisition of capital assets for atomic energy defense activities.”

2014—Subsec. (h)(1) to (3). Pub. L. 113–291 added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. C, title XXXI, §3113(b), Aug. 13, 2018, 132 Stat. 2290, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date that is 18 months after the date of the enactment of this Act [Aug. 13, 2018].”

SUBCHAPTER II—MATTERS RELATING TO SECURITY

§ 2421. Protection of national security information

(a) Policies and procedures required

The Administrator shall establish procedures to ensure the maximum protection of classified information in the possession of the Administration.