

ADDITIONAL TESTING DATA

Pub. L. 115-232, div. A, title VIII, §887(b), Aug. 13, 2018, 132 Stat. 1916, provided that: “Developmental Test and Evaluation activities under the leadership of the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment shall have prompt access to all data regarding modeling and simulation activity proposed to be used by military departments and defense agencies in support of developmental test and evaluation of military capabilities. This access shall include data associated with verification, validation, and accreditation activities.”

REVIEW AND REVISION OF POLICIES AND PRACTICES ON TEST AND EVALUATION; INCLUSION IN STRATEGIC PLAN; REPORT

Pub. L. 109-364, div. A, title II, §231(b)-(e), Oct. 17, 2006, 120 Stat. 2132, 2133, as amended by Pub. L. 117-263, div. A, title VIII, §804(d)(4), Dec. 23, 2022, 136 Stat. 2701, provided that:

“(b) REVIEW AND REVISION OF POLICIES AND PRACTICES.—

“(1) REVIEW.—During fiscal year 2007, the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Director of Operational Test and Evaluation shall review Department of Defense policies and practices on test and evaluation in order to—

“(A) reaffirm the test and evaluation principles that should guide traditional acquisition programs; and

“(B) determine how best to apply appropriate test and evaluation principles to emerging acquisition approaches.

“(2) REVISED GUIDANCE.—If the Under Secretary determines as a result of the review under paragraph (1) that a revision of the policies and practices referred to in that paragraph is necessary, the Under Secretary and the Director shall jointly issue new or revised guidance for the Department of Defense on test and evaluation to address that determination.

“(c) ISSUES TO BE ADDRESSED.—In carrying out subsection (b), the Under Secretary shall address policies and practices on test and evaluation in order to—

“(1) ensure the performance of test and evaluation activities with regard to—

“(A) items that are acquired pursuant to the authority for rapid acquisition and deployment of items in section 3601 of title 10, United States Code;

“(B) programs that are conducted pursuant to the authority for spiral development in [former] section 803 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 116 Stat. 2603; [former] 10 U.S.C. 2430 note), or other authority for the conduct of incremental acquisition programs;

“(C) systems that are acquired pursuant to other emerging acquisition approaches, as approved by the Under Secretary; and

“(D) equipment that is not subject to the operational test and evaluation requirements in sections 2366 and 2399 of title 10, United States Code [now 10 U.S.C. 4172, 4171], but that may require limited operational test and evaluation for the purpose of ensuring the safety and survivability of such equipment and personnel using such equipment; and

“(2) ensure the appropriate use, if any, of operational test and evaluation resources to assess technology readiness levels for the purpose of section 2366a of title 10, United States Code [now 10 U.S.C. 4251], and other applicable technology readiness requirements.

“(d) INCLUSION OF TESTING NEEDS IN STRATEGIC PLAN.—The Director, Test Resource Management Center, shall ensure that the strategic plan for Department of Defense test and evaluation resources developed pursuant to section 196 of title 10, United States Code [now 10 U.S.C. 4173]—

“(1) reflects any testing needs of the Department of Defense that are identified as a result of activities under subsection (b); and

“(2) includes an assessment of the test and evaluation facilities, resources, and budgets that will be required to meet such needs.

“(e) REPORT TO CONGRESS.—Not later than nine months after the date of the enactment of this Act [Oct. 17, 2006], the Under Secretary and the Director of Operational Test and Evaluation shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the review conducted under paragraph (1) of subsection (b), including any new or revised guidance issued pursuant to paragraph (2) of that subsection.”

§ 139a. Director of Cost Assessment and Program Evaluation

(a) APPOINTMENT.—There is a Director of Cost Assessment and Program Evaluation in the Department of Defense, appointed by the President, by and with the advice and consent of the Senate.

(b) INDEPENDENT ADVICE TO SECRETARY OF DEFENSE.—(1) The Director of Cost Assessment and Program Evaluation is the principal advisor to the Secretary of Defense and other senior officials of the Department of Defense, and shall provide independent analysis and advice to such officials, on the following matters:

(A) Matters assigned to the Director pursuant to this section and section 2334¹ of this title.

(B) Matters assigned to the Director by the Secretary pursuant to section 113 of this title.

(2) 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.

(c) DEPUTY DIRECTORS.—There are two Deputy Directors within the Office of the Director of Cost Assessment and Program Evaluation, as follows:

(1) The Deputy Director for Cost Assessment.

(2) The Deputy Director for Program Evaluation.

(d) RESPONSIBILITIES.—The Director of Cost Assessment and Program Evaluation shall serve as the principal official within the senior management of the Department of Defense for the following:

(1) Cost estimation and cost analysis for acquisition programs of the Department of Defense, and carrying out the duties assigned pursuant to section 2334¹ of this title.

(2) Analysis and advice on matters relating to the planning and programming phases of the Planning, Programming, Budgeting and Execution system, and the preparation of materials and guidance for such system, as directed by the Secretary of Defense, working in coordination with the Under Secretary of Defense (Comptroller).

(3) Analysis and advice for resource discussions relating to requirements under consider-

¹ See References in Text note below.

ation in the Joint Requirements Oversight Council pursuant to section 181 of this title.

(4) Formulation of study guidance for analyses of alternatives for major defense acquisition programs and performance of such analyses, as directed by the Secretary of Defense.

(5) Review, analysis, and evaluation of programs for executing approved strategies and policies and ensuring that information on programs is presented accurately and completely.

(6) Assessments of special access and compartmented intelligence programs, in coordination with the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering, and the Under Secretary of Defense for Intelligence and Security and in accordance with applicable policies.

(7) Assessments of alternative plans, programs, and policies with respect to the acquisition programs of the Department of Defense.

(8) Leading the development of improved analytical skills and competencies within the cost assessment and program evaluation workforce of the Department of Defense and improved tools, data, and methods to promote performance, economy, and efficiency in analyzing national security planning and the allocation of defense resources, including the standardization of analytical methodologies and the establishment and maintenance of a centralized knowledge repository of physical attributes or other data for modeling and simulation purposes.

(9) Performing the duties assigned to the Director in section 2222 of this title.

(e) PROGRAM EVALUATION COMPETITIVE ANALYSIS CELL.—

(1) Not later than June 1, 2024, the Secretary of Defense shall establish a team, to be known as the “Program Evaluation Competitive Analysis Cell” (referred to in this subsection as the “Cell”), to critically assess the analytical methodologies, assumptions, and data used in key strategic and operational analyses conducted by the Director of Cost Assessment and Program Evaluation.

(2) The Secretary of Defense shall—

(A) designate an individual to serve as the head of the Cell; and

(B) ensure that the Cell has a sufficient number of personnel to carry out the duties described in this subsection.

(3) The Cell shall be independent of the Director of Cost Assessment and Program Evaluation. The head of the Cell shall report directly to the Secretary of Defense or the Deputy Secretary of Defense.

(4)(A) Not less frequently than once every two years, the Cell shall conduct an alternative operational or strategic analysis of an analytical question identified by the Chairman of the Joint Chiefs of Staff under subparagraph (B). In conducting such alternative analysis, the Cell shall use assumptions different from the assumptions used by the Director of Cost Assessment and Program Evaluation for the original analysis of such question.

(B) For purposes of each alternative analysis required under subparagraph (A), at an appro-

priate time before the commencement of such analysis—

(i) the Director of the Joint Staff shall submit to the Chairman of the Joint Chiefs of Staff a list of not fewer than three operational or strategic questions previously studied by the Director of Cost Assessment and Program Evaluation that could potentially serve as the basis of for such alternative analysis; and

(ii) from such list, the Chairman shall select one question to serve as the basis for such analysis.

(f) INCLUSION OF RISK ESTIMATES IN CERTAIN SUBMISSIONS.—In any case in which the Director of Cost Assessment and Program Evaluation submits to the Secretary of Defense an analytical product that recommends not meeting or changing a requirement established by the Joint Requirements Oversight Council, the Director shall include with such submission—

(1) a risk assessment that assesses any risks of the recommended course of action with respect to the execution of operational plans and the long-term ability of the armed forces to meet the needs of combatant commanders (as determined by the Secretary of Defense); and

(2) a risk estimate from the military service in question that assesses the risks described in paragraph (1).

(g) ANNUAL REPORTS.—

(1) IN GENERAL.—Not later than February 1, 2024, and annually thereafter, the Director of Cost Assessment and Program Evaluation shall submit to the congressional defense committees a report on any strategic and operational analyses conducted under paragraphs (2), (3), (6), (7), or (8) of subsection (d). Each report shall include—

(A) a review of strategic portfolio reviews completed in the fiscal year preceding submission of the report and a description of such reviews planned for the fiscal year that begins after submission of the report;

(B) a review of analyses of alternatives completed in the fiscal year preceding submission of the report and a description of such analyses planned for the fiscal year that begins after submission of the report; and

(C) a review of defense program projections completed in the fiscal year preceding submission of the report and a description of such projections planned for the fiscal year that begins after submission of the report.

(2) FORM.—Each report required by paragraph (1) shall be submitted in classified form, but shall include an unclassified summary.

(3) BRIEFINGS.—Not later than 15 days after the submission of each report required by paragraph (1), the Director of Cost Assessment and Program Evaluation shall provide to the congressional defense committees a briefing on the contents of the report.

(h) QUARTERLY BRIEFINGS.—Beginning not later than 30 days after the date of the enactment of this subsection, and on a quarterly basis thereafter, the Director of Cost Assessment and Program Evaluation shall provide to the con-

gressional defense committees a briefing on the activities carried out by the Director during the preceding quarter and any ongoing activities of the Director as of the date of briefing.

(Added Pub. L. 111–23, title I, §101(a)(1), May 22, 2009, 123 Stat. 1705, §139c; renumbered §139a and amended Pub. L. 111–383, div. A, title IX, §901(f), title X, §1075(b)(5), Jan. 7, 2011, 124 Stat. 4322, 4369; Pub. L. 112–239, div. A, title X, §1076(f)(4), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 115–91, div. A, title IX, §912(c), Dec. 12, 2017, 131 Stat. 1521; Pub. L. 116–92, div. A, title IX, §902(5), title XVI, §1621(e)(1)(A)(iii), Dec. 20, 2019, 133 Stat. 1543, 1733; Pub. L. 116–283, div. A, title XVIII, §1883(b)(2), Jan. 1, 2021, 134 Stat. 4294; Pub. L. 118–31, div. A, title IX, §902(a), Dec. 22, 2023, 137 Stat. 355; Pub. L. 118–159, div. A, title XVII, §1701(a)(3), Dec. 23, 2024, 138 Stat. 2203.)

Editorial Notes

REFERENCES IN TEXT

Section 2334 of this title, referred to in subsecs. (b)(1)(A) and (d)(1), was repealed by Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law. Subsecs. (a) to (h) of section 2334 were transferred to various provisions in chapter 222 of this title, with the same effective date and conditions, by Pub. L. 116–283, div. A, title XVIII, §1812(b)(1), (3), (c)(1), (d), (e)(1), (f)(1), (g)(1), (h)(1), Jan. 1, 2021, 134 Stat. 4174–4177.

The date of the enactment of this subsection, referred to in subsec. (h), is the date of enactment of Pub. L. 118–31, which was approved Dec. 22, 2023.

PRIOR PROVISIONS

A prior section 139a was renumbered section 138b of this title.

Another prior section 139a was renumbered section 4351 of this title.

AMENDMENTS

2024—Subsec. (h). Pub. L. 118–159 substituted “out by the Director” for “out by Director” and “and any” for “an any”.

2023—Subsec. (d)(5). Pub. L. 118–31, §902(a)(1)(A), substituted “and ensuring” for “, ensuring” and struck out “, and assessing the effect of spending by the Department of Defense on the United States economy” after “accurately and completely”.

Subsec. (d)(8). Pub. L. 118–31, §902(a)(1)(B), inserted “, including the standardization of analytical methodologies and the establishment and maintenance of a centralized knowledge repository of physical attributes or other data for modeling and simulation purposes” after “defense resources”.

Subsecs. (e) to (h). Pub. L. 118–31, §902(a)(2), added subsecs. (e) to (h).

2021—Subsecs. (b)(1)(A), (d)(1). Pub. L. 116–283, which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to “section 2334”, which was redesignated as multiple sections.

2019—Subsec. (d)(6). Pub. L. 116–92, §1621(e)(1)(A)(iii), substituted “Under Secretary of Defense for Intelligence and Security” for “Under Secretary of Defense for Intelligence”.

Pub. L. 116–92, §902(5), substituted “Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

2017—Subsec. (d)(9). Pub. L. 115–91 added par. (9).

2013—Subsec. (d)(4). Pub. L. 112–239, which directed amendment of par. (4) by inserting a period at end, was not executed to reflect the probable intent of Congress and the prior amendment by Pub. L. 111–383, §1075(b)(5). See 2011 Amendment note below.

2011—Pub. L. 111–383, §901(f), renumbered section 139c of this title as this section.

Subsec. (d)(4). Pub. L. 111–383, §1075(b)(5), which directed amendment of section 139c of this title by inserting a period at the end of subsec. (d)(4), was executed to this section, to reflect the probable intent of Congress and the renumbering of section 139c of this title as this section by Pub. L. 111–383, §901(f). See above.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 901(f) of 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.

TRANSFER OF PERSONNEL AND FUNCTIONS

Pub. L. 111–23, title I, §101(c), May 22, 2009, 123 Stat. 1709, provided that:

“(1) TRANSFER OF FUNCTIONS.—The functions of the Office of Program Analysis and Evaluation of the Department of Defense, including the functions of the Cost Analysis Improvement Group, are hereby transferred to the Office of the Director of Cost Assessment and Program Evaluation.

“(2) TRANSFER OF PERSONNEL TO DEPUTY DIRECTOR FOR INDEPENDENT COST ASSESSMENT.—The personnel of the Cost Analysis Improvement Group are hereby transferred to the Deputy Director for Cost Assessment in the Office of the Director of Cost Assessment and Program Evaluation.

“(3) TRANSFER OF PERSONNEL TO DEPUTY DIRECTOR FOR PROGRAM ANALYSIS AND EVALUATION.—The personnel (other than the personnel transferred under paragraph (2)) of the Office of Program Analysis and Evaluation are hereby transferred to the Deputy Director for Program Evaluation in the Office of the Director of Cost Assessment and Program Evaluation.”

PILOT PROGRAM ON ALTERNATIVE ANALYSIS; ESTABLISHMENT OF ANALYSIS WORKING GROUP

Pub. L. 118–31, div. A, title IX, §902(b)–(d), Dec. 22, 2023, 137 Stat. 357, 358, provided that:

“(b) PILOT PROGRAM ON ALTERNATIVE ANALYSIS.—

“(1) IN GENERAL.—Not later than May 1, 2024, the Director of Cost Assessment and Program Evaluation shall establish a pilot program on alternative analysis (referred to in this subsection as the ‘pilot program’).

“(2) STRUCTURE.—Under the pilot program, the Director shall establish three analytical groups focused on programmatic analysis in the following:

“(A) Year 1 of the future-years defense program under section 221 of title 10, United States Code, beginning with fiscal year 2025.

“(B) Years 2 through 5 of the future-years defense program.

“(C) Years outside the future-years defense program.

“(3) REQUIREMENTS.—The Director shall ensure that at least one strategic portfolio review or an equivalent analytical effort is conducted each year under the pilot program.

“(4) TERMINATION.—The pilot program shall terminate on September 30, 2028.

“(c) ESTABLISHMENT OF ANALYSIS WORKING GROUP.—

“(1) IN GENERAL.—Not later than May 1, 2024, the Secretary of Defense shall establish within the Department of Defense a working group to be known as the ‘Analysis Working Group’.

“(2) PERSONNEL.—The Secretary of Defense shall ensure that the Analysis Working Group possesses sufficient full-time equivalent support personnel to carry out the duties of the Group, including expansive coordination activities across the Department of Defense.

“(3) MEMBERSHIP.—

“(A) REGULAR MEMBERS.—The Analysis Working Group shall be composed of at least one representative from each of the following components of the Department of Defense:

“(i) The Office of the Director of Cost Assessment and Program Evaluation.

“(ii) The Directorate for Joint Force Development (J7) of the Joint Staff.

“(iii) The Directorate for Force Structure, Resources, and Assessment (J8) of the Joint Staff.

“(iv) The Office of the Secretary of Defense for Policy.

“(v) The Chief Digital and Artificial Intelligence Office.

“(B) OBSERVERS.—At least one representative from each of the following commands shall serve as observers of the Analysis Working Group:

“(i) The United States Indo-Pacific Command.

“(ii) The United States European Command.

“(iii) The United States Central Command.

“(4) DUTIES.—The Analysis Working Group shall—

“(A) establish clear priorities and standards to focus analysts on decision support;

“(B) improve transparency of methodologies, tools, and tradecraft across the analytic community, including testing and validation for new or emerging methodologies, tools, and tradecraft;

“(C) improve quality of and expand access to data, including evaluation of new data sets, or application of existing data sets in new or novel ways;

“(D) evolve the methodologies, tools, and tradecraft methods and tools used in strategic analysis;

“(E) resolve classified access and infrastructure challenges;

“(F) foster a workforce and organizations that are innovative, creative, and provide high-quality strategic decision support; and

“(G) carry out such other activities as the Secretary of Defense determines appropriate.

“(d) RULE OF CONSTRUCTION.—Nothing in subsection (b) or (c) shall be construed to interfere with the authority of the Chiefs of Staff of the Armed Forces to establish military requirements, performance requirements, and joint performance requirements, or the authority of the Joint Requirements Oversight Council to validate such requirements under section 181 of title 10, United States Code.”

§ 139b. Secretariat for Special Operations; Special Operations Policy and Oversight Council

(a) SECRETARIAT FOR SPECIAL OPERATIONS.—

(1) IN GENERAL.—In order to fulfill the responsibilities of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict specified in section 138(b)(2)(A)(i) of this title, there shall be within the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict an office to be known as the “Secretariat for Special Operations”.

(2) PURPOSE.—The purpose of the Secretariat is to assist the Assistant Secretary in exercising authority, direction, and control with respect to the special operations-peculiar administration and support of the special oper-

ations command, including the readiness and organization of special operations forces, resources and equipment, and civilian personnel as specified in such section.

(3) DIRECTOR.—The Director of the Secretariat for Special Operations shall be appointed by the Secretary of Defense from among individuals qualified to serve as the Director. An individual serving as Director shall, while so serving, be a member of the Senior Executive Service.

(4) ADMINISTRATIVE CHAIN OF COMMAND.—For purposes of the support of the Secretariat for the Assistant Secretary in the fulfillment of the responsibilities referred to in paragraph (1), the administrative chain of command is as specified in section 167(f) of this title. Unless otherwise directed by the President, no officer below the Secretary of Defense (other than the Assistant Secretary) may intervene to exercise authority, direction, or control over the Secretariat in its support of the Assistant Secretary in the discharge of such responsibilities.

(b) SPECIAL OPERATIONS POLICY AND OVERSIGHT COUNCIL.—

(1) IN GENERAL.—In order to fulfill the responsibilities specified in section 138(b)(2)(A)(i) of this title, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall establish and lead a team known as the “Special Operation Policy and Oversight Council” (in this subsection referred to as the “Council”).

(2) PURPOSE.—The purpose of the Council is to integrate the functional activities of the headquarters of the Department of Defense in order to most efficiently and effectively provide for special operations forces and capabilities. In fulfilling this purpose, the Council shall develop and continuously improve policy, joint processes, and procedures that facilitate the development, acquisition, integration, employment, and sustainment of special operations forces and capabilities.

(3) MEMBERSHIP.—The Council shall include the following:

(A) The Assistant Secretary.

(B) Appropriate senior representatives of each of the following:

(i) The Under Secretary of Defense for Research and Engineering.

(ii) The Under Secretary of Defense for Acquisition and Sustainment.

(iii) The Under Secretary of Defense (Comptroller).

(iv) The Under Secretary of Defense for Personnel and Readiness.

(v) The Under Secretary of Defense for Intelligence.

(vi) The General Counsel of the Department of Defense.

(vii) The other Assistant Secretaries of Defense under the Under Secretary of Defense for Policy.

(viii) The military departments.

(ix) The Joint Staff.

(x) The United States Special Operations Command.

(xi) Such other officers or Agencies, elements, or components of the Department