

Logistics” for “Under Secretary of Defense for Acquisition and Technology”.

1996—Pub. L. 104-106, §903(a), (c)(3), which directed repeal of this section eff. Jan. 31, 1997, was repealed by Pub. L. 104-201.

1993—Pub. L. 103-160, §901(a)(1), renumbered section 135 of this title as this section.

Subsec. (b). Pub. L. 103-160, §904(d)(1), substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition”.

1986—Pub. L. 99-433, §105(1), amended section catchline generally, substituting “Director of Defense Research and Engineering” for “Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments; powers and duties; precedence”.

Pub. L. 99-348, §501(e)(1), substituted “Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments” for “Under Secretaries of Defense: appointment” in section catchline.

Subsec. (a). Pub. L. 99-433, §105(1), substituted a new subsec. (a) for former provisions establishing the positions of Under Secretary of Defense for Policy and Director of Defense for Research and Engineering to be appointed from civilian life by the President with the advice and consent of the Senate and prohibiting the appointment as Under Secretary of Defense for Policy of a person within ten years after relief from active duty as a commissioned officer of a regular component of an armed force. See section 134 of this title.

Pub. L. 99-348, §501(b)(1), substituted “is an Under Secretary of Defense for Policy and a Director of Defense Research and Engineering” for “are two Under Secretaries of Defense, one of whom shall be the Under Secretary of Defense for Policy and one of whom shall be the Under Secretary of Defense for Research and Engineering” and “They shall” for “The Under Secretaries of Defense shall”.

Subsec. (b). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 amended section identically adding subsec. (b) and striking out former subsec. (b) which read as follows: “The Director of Defense Research and Engineering shall perform such duties relating to research and engineering as the Secretary of Defense may prescribe, including—

“(1) being the principal adviser to the Secretary on scientific and technical matters;

“(2) supervising all research and engineering activities in the Department of Defense; and

“(3) directing, controlling, assigning, and reassigning research and engineering activities that the Secretary considers need centralized management.”

Pub. L. 99-433, §105(2), struck out provisions that the Under Secretary of Defense for Policy would perform duties and exercise powers as the Secretary of Defense might prescribe.

Pub. L. 99-348, §501(b)(2), substituted “Director of Defense Research and Engineering” for “Under Secretary of Defense for Research and Engineering”.

Subsec. (c). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 amended section identically striking out subsec. (c) which read as follows: “The Director of Defense Research and Engineering takes precedence in the Department of Defense immediately after the Under Secretary of Defense for Policy.”

Pub. L. 99-433, §105(2), struck out provisions that the Under Secretary of Defense for Policy would take precedence in the Department of Defense after Secretary of Defense, the Deputy Secretary of Defense, and the Secretaries of the military departments.

Pub. L. 99-348, §501(b)(2), substituted “Director of Defense Research and Engineering” for “Under Secretary of Defense for Research and Engineering”.

1977—Pub. L. 95-140, §2(a)(4), substituted “Under Secretaries of Defense” for “Director of Defense Research and Engineering” in section catchline.

Subsec. (a). Pub. L. 95-140, §2(a)(1), substituted provisions relating to the appointment of the Under Secretary of Defense for Policy and the Under Secretary of

Defense for Research and Engineering for provisions relating to the appointment of the Director of Defense Research and Engineering and inserted provisions relating to the prohibition of the appointment of a person as Under Secretary of Defense for Policy within ten years after relief from active duty as a commissioned officer of an armed force.

Subsec. (b). Pub. L. 95-140, §2(a)(2), substituted “The Under Secretary of Defense for Policy shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Under Secretary of Defense for Research and Engineering shall perform” for “The Director performs”.

Subsec. (c). Pub. L. 95-140, §2(a)(3), substituted “Under Secretary of Defense for Policy” for “Director” and “Deputy Secretary” for “Deputy Secretaries” and inserted provision that the Under Secretary of Defense for Research and Engineering takes precedence in the Department of Defense immediately after the Under Secretary of Defense for Policy.

1972—Subsec. (c). Pub. L. 92-596 substituted “Deputy Secretaries” for “Deputy Secretary”.

#### 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.

#### FIRST ANNUAL REPORT

Pub. L. 111-23, title I, §104(a)(2), May 22, 2009, 123 Stat. 1717, provided that: “The first annual report under subsection (c)(2) of section 139a [now 138b(b)(2)] of title 10, United States Code (as added by paragraph (1)), shall be submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than March 1, 2010, and shall address the results of reviews and assessments conducted by the Director of Defense Research and Engineering [now Assistant Secretary of Defense for Research and Engineering] pursuant to subsection (c)(1) of such section [now (b)(1)] (as so added) during the preceding calendar year.”

#### TECHNOLOGICAL MATURITY STANDARDS

Pub. L. 111-23, title I, §104(c), May 22, 2009, 123 Stat. 1717, provided that: “Not later than 180 days after the date of the enactment of this Act [May 22, 2009], the Director of Defense Research and Engineering [now Assistant Secretary of Defense for Research and Engineering], in consultation with the Director of Developmental Test and Evaluation, shall develop knowledge-based standards against which to measure the technological maturity and integration risk of critical technologies at key stages in the acquisition process for purposes of conducting the reviews and assessments of major defense acquisition programs required by subsection (c) of section 139a [now 138b(b)] of title 10, United States Code (as so added [by section 104(a)(1) of Pub. L. 111-23]).”

[For definition of “major defense acquisition programs” as used in section 104(c) of Pub. L. 111-23, set out above, see section 2(2) of Pub. L. 111-23, set out as a note under section 2430 of this title.]

#### REDESIGNATION OF POSITION OF UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING; EFFECT ON INDIVIDUAL HOLDING POSITION

Pub. L. 99-348, title V, §501(b)(3), July 1, 1986, 100 Stat. 708, provided that the redesignation by Pub. L. 99-348, §501(b)(1) (amending this section), of the position of Under Secretary of Defense for Research and Engineering as Director of Defense Research and Engineering was not to affect the appointment to such position of the individual holding such position on July 1, 1986.

#### § 138c. Assistant Secretary of Defense for Operational Energy Plans and Programs

(a) APPOINTMENT.—The Assistant Secretary of Defense for Operational Energy Plans and Pro-

grams shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of the office of Assistant Secretary.

(b) DUTIES.—The Assistant Secretary shall—

(1) provide leadership and facilitate communication regarding, and conduct oversight to manage and be accountable for, operational energy plans and programs within the Department of Defense and the Army, Navy, Air Force, and Marine Corps;

(2) establish the operational energy strategy;

(3) coordinate and oversee planning and program activities of the Department of Defense and the Army, Navy, Air Force, and the Marine Corps related to—

(A) implementation of the operational energy strategy;

(B) the consideration of operational energy demands in defense planning, requirements, and acquisition processes; and

(C) research and development investments related to operational energy demand and supply technologies; and

(4) monitor and review all operational energy initiatives in the Department of Defense.

(c) PRINCIPAL ADVISOR FOR OPERATIONAL ENERGY PLANS AND PROGRAMS.—(1) The Assistant Secretary is the principal adviser to the Secretary of Defense and the Deputy Secretary of Defense regarding operational energy plans and programs and the principal policy official within the senior management of the Department of Defense regarding operational energy plans and programs.

(2) The Assistant Secretary may communicate views on matters related to operational energy plans and programs and the operational energy strategy required by subsection (d) 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.

(3) The Assistant Secretary, in consultation with the heads of the military departments and the Assistant Secretary of Defense for Research and Engineering, shall—

(A) lead the alternative fuel activities of the Department of Defense and oversee the investments of the Department in such activities;

(B) make recommendations to the Secretary regarding the development of alternative fuels by the military departments and the Office of the Secretary of Defense;

(C) establish guidelines and prescribe policy to streamline the investments in alternative fuel activities across the Department of Defense;

(D) encourage collaboration with and leveraging of investments made by the Department of Energy, the Department of Agriculture, and other relevant Federal agencies to advance alternative fuel development to the benefit of the Department of Defense; and

(E) certify the budget associated with the investment of the Department of Defense in alternative fuel activities in accordance with subsection (e)(4).

(d) OPERATIONAL ENERGY STRATEGY.—(1) The Assistant Secretary shall be responsible for the

establishment and maintenance of a department-wide transformational strategy for operational energy. The strategy shall establish near-term, mid-term, and long-term goals, performance metrics to measure progress in meeting the goals, and a plan for implementation of the strategy within the military departments, the Office of the Secretary of Defense, and Defense Agencies.

(2) The Secretary of each military department shall designate a senior official within each armed force under the jurisdiction of the Secretary who shall be responsible for operational energy plans and programs for that armed force. The officials so designated shall be responsible for coordinating with the Assistant Secretary and implementing initiatives pursuant to the strategy with regard to that official's armed force.

(3) The Chairman of the Joint Chiefs of Staff shall designate a senior official under the jurisdiction of the Chairman who shall be responsible for operational energy plans and programs for the Joint Chiefs of Staff and the Joint Staff. The official so designated shall be responsible for coordinating with the Assistant Secretary and implementing initiatives pursuant to the strategy with regard to the Joint Chiefs of Staff and the Joint Staff.

(4) By authority of the Secretary of Defense, the Assistant Secretary shall prescribe policies and procedures for the implementation of the strategy. The Assistant Secretary shall provide guidance to, and consult with, the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments, and the officials designated under paragraph (2) with respect to specific operational energy plans and programs to be carried out pursuant to the strategy.

(5) Updates to the strategy required by paragraph (1) shall be submitted to the congressional defense committees as soon as practicable after the modifications to the strategy are made.

(e) BUDGETARY AND FINANCIAL MATTERS.—(1) The Assistant Secretary shall review and make recommendations to the Secretary of Defense regarding all budgetary and financial matters relating to the operational energy strategy.

(2) The Secretary of Defense shall require that the Secretary of each military department and the head of each Defense Agency with responsibility for executing activities associated with the strategy transmit their proposed budget for those activities for a fiscal year to the Assistant Secretary for review before submission of the proposed budget to the Under Secretary of Defense (Comptroller).

(3) The Assistant Secretary shall review a proposed budget transmitted under paragraph (2) for a fiscal year and, not later than January 31 of the preceding fiscal year, shall submit to the Secretary of Defense a report containing the comments of the Assistant Secretary with respect to the proposed budget, together with the certification of the Assistant Secretary regarding whether the proposed budget is adequate for implementation of the strategy.

(4) Not later than 30 days after the date on which the budget for a fiscal year is submitted to Congress pursuant to section 1105 of title 31,

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.