

(3) To assist Congress and Department of Defense officials in making investment decisions for research in technical areas where the United States may not be the global leader.

(4) To identify areas where significant opportunities for cooperative research may exist.

(5) To coordinate and promote the international cooperative research and analysis activities of each of the armed forces and Defense Agencies.

(6) To establish and maintain an electronic database on international research capabilities, comparative assessments of capabilities, cooperative research opportunities, and ongoing cooperative programs.

(c) FOCUS OF PROGRAM.—The program shall be focused on research and technologies at a technical maturity level equivalent to Department of Defense basic and applied research programs.

(d) COORDINATION.—(1) The Assistant Secretary shall coordinate the program with the international cooperation and analysis activities of the military departments and Defense Agencies.

(2) The Secretaries of the military departments and the directors of the Defense Agencies shall provide the Assistant Secretary of Defense for Research and Engineering such assistance as the Assistant Secretary may require for purposes of the program.

(3)(A) Funds available to a military department for a fiscal year for monitoring or analyzing the research activities and capabilities of foreign nations may not be obligated or expended until the Director<sup>2</sup> certifies to the Under Secretary of Defense for Acquisition, Technology, and Logistics that the Secretary of such military department has provided the assistance required under paragraph (2).

(B) The limitation in subparagraph (A) shall not be construed to alter or effect the availability to a military department of funds for intelligence activities.

(e) CLASSIFICATION OF DATABASE INFORMATION.—Information in electronic databases of the Global Research Watch program shall be maintained in unclassified form and, as determined necessary by the Assistant Secretary, in classified form in such databases.

(f) TERMINATION.—The requirement to carry out the program under this section shall terminate on September 30, 2015.

(Added Pub. L. 108-136, div. A, title II, §231(a), Nov. 24, 2003, 117 Stat. 1421; amended Pub. L. 109-364, div. A, title II, §232, Oct. 17, 2006, 120 Stat. 2134; Pub. L. 111-84, div. A, title II, §211, Oct. 28, 2009, 123 Stat. 2225; Pub. L. 111-383, div. A, title IX, §901(j)(3), Jan. 7, 2011, 124 Stat. 4324.)

#### PRIOR PROVISIONS

A prior section 2365, added Pub. L. 99-500, §101(c) [title X, §909(a)(1), formerly §909(a)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-142, and Pub. L. 99-591, §101(c) [title X, §909(a)(1), formerly §909(a)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-142, redesignated §909(a)(1), Pub. L. 100-26, §4(b), Apr. 21, 1987, 101 Stat. 274; Pub. L. 99-661, div. A, title IX, formerly title IV, §909(a)(1), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-26, §5(3)(A), Apr. 21, 1987, 101 Stat. 274; Pub. L. 100-456, div. A, title VIII,

§802, Sept. 29, 1988, 102 Stat. 2008, required use of competitive prototype program strategy in development of major weapons systems, prior to repeal by Pub. L. 102-484, div. A, title VIII, §821(c)(1), Oct. 23, 1992, 106 Stat. 2460.

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383, §901(j)(3)(A), substituted “Assistant Secretary” for “Director of Defense Research and Engineering”.

Subsec. (d)(1). Pub. L. 111-383, §901(j)(3)(B), substituted “Assistant Secretary” for “Director”.

Subsec. (d)(2). Pub. L. 111-383, §901(j)(3)(C), substituted “Assistant Secretary of Defense for Research and Engineering” for “Director of Defense Research and Engineering” and “Assistant Secretary may” for “Director may”.

Subsec. (e). Pub. L. 111-383, §901(j)(3)(D), substituted “Assistant Secretary” for “Director”.

2009—Subsec. (d)(3). Pub. L. 111-84, §211(a), added par. (3).

Subsec. (f). Pub. L. 111-84, §211(b), substituted “2015” for “2011”.

2006—Subsec. (f). Pub. L. 109-364 substituted “2011” for “2006”.

#### 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.

### §2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production

(a) REQUIREMENTS.—(1) The Secretary of Defense shall provide that—

(A) a covered system may not proceed beyond low-rate initial production until realistic survivability testing of the system is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and

(B) a major munition program or a missile program may not proceed beyond low-rate initial production until realistic lethality testing of the program is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.

(2) The Secretary of Defense shall provide that a covered product improvement program may not proceed beyond low-rate initial production until—

(A) in the case of a product improvement to a covered system, realistic survivability testing is completed in accordance with this section; and

(B) in the case of a product improvement to a major munitions program or a missile program, realistic lethality testing is completed in accordance with this section.

(b) TEST GUIDELINES.—(1) Survivability and lethality tests required under subsection (a) shall be carried out sufficiently early in the development phase of the system or program (including a covered product improvement program) to allow any design deficiency demonstrated by the testing to be corrected in the design of the system, munition, or missile (or in the product modification or upgrade to the system, munition, or missile) before proceeding beyond low-rate initial production.

<sup>2</sup> So in original. Probably should be “Assistant Secretary”.

(2) The costs of all tests required under that subsection shall be paid from funds available for the system being tested.

(c) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary determines that live-fire testing of such system or program would be unreasonably expensive and impractical and submits a certification of that determination to Congress—

(A) before Milestone B approval for the system or program; or

(B) in the case of a system or program initiated at—

(i) Milestone B, as soon as is practicable after the Milestone B approval; or

(ii) Milestone C, as soon as is practicable after the Milestone C approval.

(2) In the case of a covered system (or covered product improvement program for a covered system), the Secretary may waive the application of the survivability and lethality tests of this section to such system or program and instead allow testing of the system or program in combat by firing munitions likely to be encountered in combat at components, subsystems, and sub-assemblies, together with performing design analyses, modeling and simulation, and analysis of combat data. Such alternative testing may not be carried out in the case of any covered system (or covered product improvement program for a covered system) unless the Secretary certifies to Congress, before the system or program enters system development and demonstration, that the survivability and lethality testing of such system or program otherwise required by this section would be unreasonably expensive and impracticable.

(3) The Secretary shall include with any certification under paragraph (1) or (2) a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.

(4) In time of war or mobilization, the President may suspend the operation of any provision of this section.

(d) REPORTING TO CONGRESS.—(1) At the conclusion of survivability or lethality testing under subsection (a), the Secretary of Defense shall submit a report on the testing to the congressional defense committees. Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.

(2) If a decision is made within the Department of Defense to proceed to operational use of a system, or to make procurement funds available for a system, before Milestone C approval of that system, the Secretary of Defense shall submit to the congressional defense committees, as soon as practicable after such decision, the following:

(A) A report describing the status of survivability and live fire testing of that system.

(B) The report required under paragraph (1).

(e) DEFINITIONS.—In this section:

(1) The term “covered system” means—

(A) a vehicle, weapon platform, or conventional weapon system that—

(i) includes features designed to provide some degree of protection to users in combat; and

(ii) is a major system as defined in section 2302(5) of this title; or

(B) any other system or program designated by the Secretary of Defense for purposes of this section.

(2) The term “major munitions program” means—

(A) a munition program for which more than 1,000,000 rounds are planned to be acquired; or

(B) a conventional munitions program that is a major system within the meaning of that term in section 2302(5) of this title.

(3) The term “realistic survivability testing” means, in the case of a covered system (or a covered product improvement program for a covered system), testing for vulnerability of the system in combat by firing munitions likely to be encountered in combat (or munitions with a capability similar to such munitions) at the system configured for combat, with the primary emphasis on testing vulnerability with respect to potential user casualties and taking into equal consideration the susceptibility to attack and combat performance of the system.

(4) The term “realistic lethality testing” means, in the case of a major munitions program or a missile program (or a covered product improvement program for such a program), testing for lethality by firing the munition or missile concerned at appropriate targets configured for combat.

(5) The term “configured for combat”, with respect to a weapon system, platform, or vehicle, means loaded or equipped with all dangerous materials (including all flammables and explosives) that would normally be on board in combat.

(6) The term “covered product improvement program” means a program under which—

(A) a modification or upgrade will be made to a covered system which (as determined by the Secretary of Defense) is likely to affect significantly the survivability of such system; or

(B) a modification or upgrade will be made to a major munitions program or a missile program which (as determined by the Secretary of Defense) is likely to affect significantly the lethality of the munition or missile produced under the program.

(7) The term “Milestone B approval” means a decision to enter into system development and demonstration pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(8) The term “Milestone C approval” means a decision to enter into production and deployment pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(Added Pub. L. 99-500, §101(c) [title X, §910(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-143, and Pub. L. 99-591, §101(c) [title X, §910(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-143; Pub. L. 99-661, div. A, title IX, formerly title IV, §910(a)(1), Nov. 14, 1986, 100 Stat. 3923, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-180, div. A, title VIII, §802, title XII, §1231(11), Dec. 4, 1987, 101 Stat. 1123, 1160; Pub. L. 100-456, div. A, title XII, §1233(l)(3), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101-189, div. A, title VIII, §§802(c)(1)-(4)(A), 804, Nov. 29, 1989, 103 Stat. 1486, 1488; Pub. L. 101-510, div. A, title XIV, §1484(h)(7), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103-160, div. A, title VIII, §828(d)(2), Nov. 30, 1993, 107 Stat. 1715; Pub. L. 103-355, title III, §3014, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104-106, div. A, title XV, §1502(a)(18), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107-107, div. A, title VIII, §821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107-314, div. A, title VIII, §818, Dec. 2, 2002, 116 Stat. 2611; Pub. L. 108-136, div. A, title X, §1043(b)(13), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 110-417, [div. A], title II, §251(a), (b), Oct. 14, 2008, 122 Stat. 4400.)

#### CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

#### AMENDMENTS

2008—Subsec. (d). Pub. L. 110-417, §251(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (e)(1). Pub. L. 110-417, §251(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘covered system’ means a vehicle, weapon platform, or conventional weapon system—

“(A) that includes features designed to provide some degree of protection to users in combat; and

“(B) that is a major system within the meaning of that term in section 2302(5) of this title.”

2003—Subsec. (e)(7) to (9). Pub. L. 108-136 redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: “The term ‘congressional defense committees’ means—

“(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

“(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

2002—Subsec. (c)(1). Pub. L. 107-314, §818(a), amended par. (1) generally. Prior to amendment par. (1) read as follows: “The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary, before the system or program enters system development and demonstration, certifies to Congress that live-fire testing of such system or program would be unreasonably expensive and impractical.”

Subsec. (e)(8), (9). Pub. L. 107-314, §818(b), added pars. (8) and (9).

2001—Subsec. (c)(1), (2). Pub. L. 107-107 substituted “system development and demonstration” for “engineering and manufacturing development”.

1999—Subsec. (e)(7)(B). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

1996—Subsec. (d). Pub. L. 104-106, §1502(a)(18)(A), substituted “the congressional defense committees” for “the Committees on Armed Services and on Appropriations of the Senate and House of Representatives”.

Subsec. (e)(7). Pub. L. 104-106, §1502(a)(18)(B), added par. (7).

1994—Subsec. (c)(1). Pub. L. 103-355, §3014(a)(2), (b), substituted “engineering and manufacturing development” for “full-scale engineering development” in first sentence and redesignated second sentence as par. (3).

Subsec. (c)(2). Pub. L. 103-355, §3014(a)(1), (3), added par. (2) and redesignated former par. (2) as (4).

Subsec. (c)(3). Pub. L. 103-355, §3014(a)(2), redesignated second sentence of par. (1) as par. (3) and substituted “certification under paragraph (1) or (2)” for “such certification”.

Subsec. (c)(4). Pub. L. 103-355, §3014(a)(1), redesignated par. (2) as (4).

1993—Subsec. (d). Pub. L. 103-160 substituted “to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives” for “to the defense committees of Congress (as defined in section 2362(e)(3) of this title)”.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101-510 made technical correction to directory language of Pub. L. 101-189, §804(a), see 1989 Amendment note below.

1989—Pub. L. 101-189, §802(c)(4)(A), substituted “testing and lethality testing required before full-scale production” for “and lethality testing; operational testing” in section catchline.

Subsec. (a)(1)(A). Pub. L. 101-189, §802(c)(1)(A), 804(a), as amended by Pub. L. 101-510, substituted “this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and” for “this section;”.

Subsec. (a)(1)(B). Pub. L. 101-189, §802(c)(1)(B), 804(a), as amended by Pub. L. 101-510, substituted “this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and” for “this section; and”.

Subsec. (a)(1)(C). Pub. L. 101-189, §802(c)(1)(C), struck out subpar. (C) which read as follows: “a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed in accordance with this section.”

Subsec. (b)(2), (3). Pub. L. 101-189, §802(c)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “In the case of a major defense acquisition program, no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.”

Subsec. (d). Pub. L. 101-189, §804(b), inserted at end “Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary’s overall assessment of the testing.”

Subsec. (e)(3) to (8). Pub. L. 101-189, §802(c)(3), redesignated pars. (4), (5), (6), and (8) as (3), (4), (5), and (6), respectively, and struck out former par. (3) which defined “major defense acquisition program” and former par. (7) which defined “operational test and evaluation”.

1988—Subsec. (a)(2). Pub. L. 100-456 made technical correction to directory language of Pub. L. 100-180, §802(a)(1)(C). See 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100-180, §802(a)(1), as amended by Pub. L. 100-456, designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), and added par. (2).

Subsec. (b)(1). Pub. L. 100-180, §802(a)(2), inserted “(including a covered product improvement program)” after “system or program” and “(or in the product modification or upgrade to the system, munition, or missile)” after “or missile”.

Subsec. (b)(2). Pub. L. 100-180, §802(b), inserted at end “The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.”

Subsec. (c). Pub. L. 100-180, §802(a)(3), (c), (d)(1), designated existing provisions as par. (1), substituted “missile program, or covered product improvement program” for “or missile program”, and inserted at end “The Secretary shall include with any such certification a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.”

Pub. L. 100-180, §802(d)(2), designated existing provisions of former subsec. (d) as par. (2) of subsec. (c) and struck out heading of former subsec. (d) “Waiver in time of war or mobilization”.

Subsec. (d). Pub. L. 100-180, §802(d)(3), added subsec. (d). Former subsec. (d) redesignated subsec. (c)(2).

Subsec. (e)(1)(B). Pub. L. 100-180, §1231(11), substituted “section 2302(5)” for “section 2303(5)”.

Subsec. (e)(4). Pub. L. 100-180, §802(a)(4)(A), (e), inserted “(or a covered product improvement program for a covered system)” after “covered system”, struck out “and survivability” after “for vulnerability”, and substituted “susceptibility to attack” for “operational requirements”.

Subsec. (e)(5). Pub. L. 100-180, §802(a)(4)(B), inserted “(or a covered product improvement program for such a program)” after “missile program”.

Subsec. (e)(8). Pub. L. 100-180, §802(a)(4)(C), added par. (8).

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 1233(l)(5) of Pub. L. 100-456 provided that: “The amendments made by this subsection [amending this section and sections 2435 and 8855 of this title and section 301c of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in the enactment of Public Law 100-180.”

#### EFFECTIVE DATE

Section 101(c) [title X, §910(b)] of Pub. L. 99-500 and Pub. L. 99-591, and section 910(b) of title IX, formerly title IV, of Pub. L. 99-661, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “Section 2366 of title 10, United States Code (as added by subsection (a)), shall apply with respect to any decision to proceed with a program beyond low-rate initial production that is made—

“(1) after May 31, 1987, in the case of a decision referred to in subsection (a)(1) or (a)(2) of such section; or

“(2) after the date of the enactment of this Act [Oct. 18, 1986], in the case of a decision referred to in subsection (a)(3) of such section.”

### § 2366a. Major defense acquisition programs: certification required before Milestone A A<sup>1</sup> approval

(a) CERTIFICATION.—A major defense acquisition program may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the Milestone Decision Authority certifies, after consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs—

(1) that the program fulfills an approved initial capabilities document;

(2) that the program is being executed by an entity with a relevant function as identified by the Secretary of Defense under section 118b of this title;

(3) if the program duplicates a capability already provided by an existing system, the duplication provided by such program is necessary and appropriate;

(4) that a determination of applicability of core depot-level maintenance and repair capabilities requirements has been made;

(6)<sup>2</sup> that an analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation; and

(7) that a cost estimate for the program has been submitted, with the concurrence of the Director of Cost Assessment and Program Evaluation, and that the level of resources required to develop, procure, and sustain the program is consistent with the priority level assigned by the Joint Requirements Oversight Council.

(b) NOTIFICATION.—(1) With respect to a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram of such program, if the projected cost of the program or subprogram, at any time prior to Milestone B approval, exceeds the cost estimate for the program submitted at the time of the certification by at least 25 percent, or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent, the program manager for the program concerned shall notify the Milestone Decision Authority. The Milestone Decision Authority, in consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs, shall determine whether the level of resources required to develop and procure the program remains consistent with the priority level assigned by the Joint Requirements Oversight Council. The Milestone Decision Authority may withdraw the certification concerned or rescind Milestone A approval if the Milestone Decision Authority determines that such action is in the interest of national defense.

(2) Not later than 30 days after a program manager submits a notification to the Milestone Decision Authority pursuant to paragraph (1) with respect to a major defense acquisition program or designated major subprogram, the Milestone Decision Authority shall submit to the congressional defense committees a report that—

(A) identifies the root causes of the cost or schedule growth in accordance with applicable policies, procedures, and guidance;

(B) identifies appropriate acquisition performance measures for the remainder of the development of the program; and

(C) includes one of the following:

(i) A written certification (with a supporting explanation) stating that—

(I) the program is essential to national security;

(II) there are no alternatives to the program that will provide acceptable military capability at less cost;

(III) new estimates of the development cost or schedule, as appropriate, are reasonable; and

<sup>1</sup> So in original.

<sup>2</sup> So in original. There is no par. (5).