

the term” for “(1) The term”, redesignated subpars. (A) to (C) of former par. (1) as pars. (1) to (3), respectively, realigned margins, and struck out former par. (2) which defined “congressional defense committees” to mean the Committees on Armed Services and Appropriations of the Senate and the House of Representatives.

2002—Subsec. (a)(2). Pub. L. 107-314 substituted “means a conventional weapons system that” for “means” in introductory provisions and struck out “a conventional weapons system that” before “is a major system” in subpar. (A).

2001—Subsec. (b)(3). Pub. L. 107-107 substituted “Under Secretary of Defense for Acquisition, Technology, and Logistics” for “Under Secretary of Defense for Acquisition and Technology”.

1999—Subsec. (h)(2)(B). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

1996—Subsec. (h)(2). Pub. L. 104-106 substituted “means—” and subpars. (A) and (B) for “means the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.”

1994—Subsecs. (b)(5), (c)(1). Pub. L. 103-337, § 1070(a)(11)(A), substituted “139(a)(2)(B)” for “138(a)(2)(B)”.

Subsec. (e)(3)(B). Pub. L. 103-337, § 1070(f), substituted “solely in testing for” for “solely as a representative of”.

Subsec. (g). Pub. L. 103-337, § 1070(a)(11)(B), substituted “139” for “138”.

Subsec. (h)(1). Pub. L. 103-337, § 1070(a)(11)(C), substituted “139(a)(2)(A)” for “138(a)(2)(A)”.

1993—Subsec. (b)(3). Pub. L. 103-160 substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition”.

1992—Subsec. (e)(3). Pub. L. 102-484 designated existing provisions as subpar. (A) and added subpar. (B).

#### ASSESSMENT OF RISK IN CONCURRENT DEVELOPMENT OF MAJOR DEFENSE ACQUISITION SYSTEMS

Pub. L. 101-189, div. A, title VIII, § 801, Nov. 29, 1989, 103 Stat. 1483, provided that:

“(a) ESTABLISHMENT OF POLICY.—The Secretary of Defense shall establish guidelines for—

“(1) determining the degree of concurrency that is appropriate for the development of major defense acquisition systems; and

“(2) assessing the degree of risk associated with various degrees of concurrency.

“(b) REPORT ON GUIDELINES.—The Secretary shall submit to Congress a report that describes the guidelines established under subsection (a) and the method used for assessing risk associated with concurrency.

“(c) REPORT ON CONCURRENCY IN MAJOR ACQUISITION PROGRAMS.—(1) The Secretary shall also submit to Congress a report outlining the risk associated with concurrency for each major defense acquisition program that is in either full-scale development or low-rate initial production as of January 1, 1990.

“(2) The report shall include consideration of the following matters with respect to each such program:

“(A) The degree of confidence in the enemy threat assessment for establishing the system’s requirements.

“(B) The type of contract involved.

“(C) The degree of stability in program funding.

“(D) The level of maturity of technology involved in the system.

“(E) The availability of adequate test assets, including facilities and ranges.

“(F) The plans for transition from development to production.

“(d) SUBMISSION OF REPORTS.—The reports under subsections (b) and (c) shall be submitted to Congress not later than March 1, 1990.

“(e) DEFINITION.—For purposes of this section, the term ‘concurrency’ means the degree of overlap between the development and production processes of an acquisition program.”

#### § 2400. Low-rate initial production of new systems

(a) DETERMINATION OF QUANTITIES TO BE PROCURED FOR LOW-RATE INITIAL PRODUCTION.—(1) In the course of the development of a major system, the determination of what quantity of articles of that system should be procured for low-rate initial production (including the quantity to be procured for preproduction verification articles) shall be made—

(A) when the milestone B decision with respect to that system is made; and

(B) by the official of the Department of Defense who makes that decision.

(2) In this section, the term “milestone B decision” means the decision to approve the system development and demonstration of a major system by the official of the Department of Defense designated to have the authority to make that decision.

(3) Any increase from a quantity determined under paragraph (1) may only be made with the approval of the official making the determination.

(4) The quantity of articles of a major system that may be procured for low-rate initial production may not be less than one operationally configured production unit unless another quantity is established at the milestone B decision.

(5) The Secretary of Defense shall include a statement of the quantity determined under paragraph (1) in the first SAR submitted with respect to the program concerned after that quantity is determined. If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone B decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity. For purposes of this paragraph, the term “SAR” means a Selected Acquisition Report submitted under section 2432 of this title.

(b) LOW-RATE INITIAL PRODUCTION OF WEAPON SYSTEMS.—Except as provided in subsection (c), low-rate initial production with respect to a new system is production of the system in the minimum quantity necessary—

(1) to provide production-configured or representative articles for operational tests pursuant to section 2399 of this title;

(2) to establish an initial production base for the system; and

(3) to permit an orderly increase in the production rate for the system sufficient to lead to full-rate production upon the successful completion of operational testing.

(c) LOW-RATE INITIAL PRODUCTION OF NAVAL VESSEL AND SATELLITE PROGRAMS.—With respect to naval vessel programs and military satellite programs, low-rate initial production is production of items at the minimum quantity and rate that (1) preserves the mobilization production base for that system, and (2) is feasible, as determined pursuant to regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101-189, div. A, title VIII, § 803(a), Nov. 29, 1989, 103 Stat. 1487; amended Pub. L. 103-355, title III, § 3015, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104-106, div. A, title X, § 1062(d), div. D, title XLIII, § 4321(b)(13), Feb. 10, 1996, 110 Stat.

444, 673; Pub. L. 107–107, div. A, title VIII, § 821(c), Dec. 28, 2001, 115 Stat. 1182.)

PRIOR PROVISIONS

A prior section 2400 was renumbered section 2534 of this title.

AMENDMENTS

2001—Subsec. (a)(1)(A). Pub. L. 107–107, § 821(c)(1), substituted “milestone B” for “milestone II”.

Subsec. (a)(2). Pub. L. 107–107 substituted “milestone B” for “milestone II” and “system development and demonstration” for “engineering and manufacturing development”.

Subsec. (a)(4), (5). Pub. L. 107–107, § 821(c)(1), substituted “milestone B” for “milestone II”.

1996—Subsec. (a)(5). Pub. L. 104–106, § 4321(b)(13), substituted “this paragraph” for “the preceding sentence”.

Subsec. (c). Pub. L. 104–106, § 1062(d), struck out “(1)” before “With respect to”, redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows: “For each naval vessel program and military satellite program, the Secretary of Defense shall submit to Congress a report providing—

“(A) an explanation of the rate and quantity prescribed for low-rate initial production and the considerations in establishing that rate and quantity;

“(B) a test and evaluation master plan for that program; and

“(C) an acquisition strategy for that program that has been approved by the Secretary, to include the procurement objectives in terms of total quantity of articles to be procured and annual production rates.”

1994—Subsec. (a)(2). Pub. L. 103–355, § 3015(1), substituted “this section” for “paragraph (1)” and “engineering and manufacturing development” for “full-scale engineering development”.

Subsec. (a)(4). Pub. L. 103–355, § 3015(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(5). Pub. L. 103–355, § 3015(2), redesignated par. (4) as (5) and inserted after first sentence “If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone II decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity.”

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(13) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

**§ 2401. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles**

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel, aircraft, or combat vehicle or for the provision of a service through use by a contractor of a vessel, aircraft, or combat vehicle only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

(2) The Secretary of a military department may make a contract that is an agreement to lease or charter or an agreement to provide services and that is (or will be) accompanied by a contract for the actual lease, charter, or provision of services only as provided in subsection (b) if the contract for the actual lease, charter,

or provision of services is (or will be) a contract described in paragraph (1).

(b)(1) The Secretary may make a contract described in subsection (a)(1) if—

(A) the Secretary has been specifically authorized by law to make the contract;

(B) before a solicitation for proposals for the contract was issued the Secretary notified the congressional defense committees of the Secretary’s intention to issue such a solicitation;

(C) the Secretary has notified those committees of the proposed contract and provided a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of the vessel, aircraft, or combat vehicle to be used under the contract, and a period of 30 days of continuous session of Congress has expired following the date on which notice was received by such committees; and

(D) the Secretary has certified to those committees—

(i) that entering into the proposed contract as a means of obtaining the vessel, aircraft, or combat vehicle is the most cost-effective means of obtaining such vessel, aircraft, or combat vehicle; and

(ii) that the Secretary has determined that the lease complies with all applicable laws, Office of Management and Budget circulars, and Department of Defense regulations.

(2) For purposes of paragraph (1)(C), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in a computation of such 30-day period.

(3) Upon receipt of a notice under paragraph (1)(C), a committee identified in paragraph (1)(B) may request the Inspector General of the Department of Defense or the Comptroller General of the United States to conduct a review of the proposed contract to determine whether or not such contract meets the requirements of this section.

(4) If a review is requested under paragraph (3), the Inspector General of the Department of Defense or the Comptroller General of the United States, as the case may be, shall submit to the Secretary and the congressional defense committees a report on such review before the expiration of the period specified in paragraph (1)(C).

(5) In the case of a contract described in subsection (a)(1)(B), the commander of the special operations command may make a contract without regard to this subsection if—

(A) funds are available and obligated for the full cost of the contract (including termination costs) on or before the date the contract is awarded;

(B) the Secretary of Defense submits to the congressional defense committees a certification that there is no alternative for meeting urgent operational requirements other than making the contract; and

(C) a period of 30 days of continuous session of Congress has expired following the date on which the certification was received by such committees.