

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." 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

Pub. L. 100-456, div. A, title XII, § 1233(j)(5), Sept. 29, 1988, 102 Stat. 2058, 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

Pub. L. 99-500, § 101(c) [title X, § 910(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-145, Pub. L. 99-591, § 101(c) [title X, § 910(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-145, and Pub. L. 99-661, div. A, title IX, formerly title IV, § 910(b), Nov. 14, 1986, 100 Stat. 3924, 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 approval

(a) CERTIFICATION.—A major defense acquisition program may not receive Milestone A ap-

proval 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 logistics capabilities requirements has been made;

(5) that an analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation; and

(6) 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

(IV) the management structure for the program is adequate to manage and control program development cost and schedule.

(ii) A plan for terminating the development of the program or withdrawal of Milestone A approval if the Milestone Decision Authority determines that such action is in the interest of national defense.

(c) DEFINITIONS.—In this section:

(1) The term “major defense acquisition program” has the meaning provided in section 2430 of this title.

(2) The term “designated major subprogram” means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(3) The term “initial capabilities document” means any capabilities requirement document approved by the Joint Requirements Oversight Council that establishes the need for a materiel approach to resolve a capability gap.

(4) The term “technology development program” means a coordinated effort to assess technologies and refine user performance parameters to fulfill a capability gap identified in an initial capabilities document.

(5) The term “entity” means an entity listed in section 118b(c)(3) of this title.

(6) The term “Milestone B approval” has the meaning provided that term in section 2366(e)(7) of this title.

(7) The term “core logistics capabilities” means the core logistics capabilities identified under section 2464(a) of this title.

(Added Pub. L. 110–181, div. A, title IX, §943(a)(1), Jan. 28, 2008, 122 Stat. 288, §2366b; renumbered §2366a and amended Pub. L. 110–417, [div. A], title VIII, §813(b), (e)(1), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, §101(d)(3), title II, §§201(e), 204(a), (b), May 22, 2009, 123 Stat. 1710, 1720, 1723; Pub. L. 111–383, div. A, title VIII, §814(b), title X, §1075(b)(33), Jan. 7, 2011, 124 Stat. 4266, 4370; Pub. L. 112–81, div. A, title VIII, §801(a), (e)(1), Dec. 31, 2011, 125 Stat. 1482, 1483; Pub. L. 112–239, div. A, title III, §322(e)(1), title X, §1076(a)(10), Jan. 2, 2013, 126 Stat. 1695, 1948.)

PRIOR PROVISIONS

A prior section 2366a was renumbered section 2366b of this title.

AMENDMENTS

2013—Pub. L. 112–239, §1076(a)(10)(C), made technical amendment to directory language of Pub. L. 112–81, §801(e)(1)(A). See 2011 Amendment note below.

Subsec. (a)(4). Pub. L. 112-239, §322(e)(1), substituted “core logistics capabilities” for “core depot-level maintenance and repair capabilities”.

Subsec. (a)(5), (6). Pub. L. 112-239, §1076(a)(10)(A), made technical amendment to directory language of Pub. L. 112-81, §801(a)(1)(B). See 2011 Amendment notes below.

Subsec. (c)(7). Pub. L. 112-239, §1076(a)(10)(B), made technical amendment to directory language of Pub. L. 112-81, §801(a)(2). See 2011 Amendment note below.

Pub. L. 112-239, §322(e)(1), substituted “core logistics capabilities” for “core depot-level maintenance and repair capabilities” in two places.

2011—Pub. L. 112-81, §801(e)(1)(A), as amended by Pub. L. 112-239, §1076(a)(10)(C), struck out “or Key Decision Point A” after “Milestone A” in section catchline.

Subsec. (a). Pub. L. 112-81, §801(e)(1)(B), struck out “, or Key Decision Point A approval in the case of a space program,” after “Milestone A approval” and “, or Key Decision Point B approval in the case of a space program,” after “Milestone B approval” in introductory provisions.

Subsec. (a)(2). Pub. L. 112-81, §801(a)(1)(A), substituted “function” for “core competency”.

Subsec. (a)(4). Pub. L. 112-81, §801(a)(1)(C), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 112-81, §801(a)(1)(B), as amended by Pub. L. 112-239, §1076(a)(10)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 112-81, §801(a)(1)(D), substituted “develop, procure, and sustain” for “develop and procure”.

Pub. L. 112-81, §801(a)(1)(B), as amended by Pub. L. 112-239, §1076(a)(10)(A), redesignated par. (5) as (6).

Subsec. (b)(1). Pub. L. 112-81, §801(e)(1)(C)(i), struck out “(or Key Decision Point A approval in the case of a space program)” after “Milestone A approval”.

Pub. L. 111-383, §814(b)(1)(A), substituted “a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram, if the projected cost of the program or subprogram” for “a major defense acquisition program certified by the Milestone Decision Authority under subsection (a), if the projected cost of the program”.

Subsec. (b)(2). Pub. L. 111-383, §814(b)(1)(B), inserted “or designated major subprogram” after “major defense acquisition program”.

Subsec. (b)(2)(C)(ii). Pub. L. 112-81, §801(e)(1)(C)(ii), struck out “, or Key Decision Point A approval in the case of a space program,” after “Milestone A approval”.

Subsec. (c). Pub. L. 111-383, §1075(b)(33)(A), inserted a space after “(c)”.

Subsec. (c)(2) to (5). Pub. L. 111-383, §814(b)(2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively. Former par. (5) redesignated (6).

Pub. L. 111-383, §1075(b)(33)(B), which directed substitution of “section 118b(c)(3) of this title” for “section 125a(a) of this title” in par. (4), was executed by making the substitution in par. (5) to reflect the probable intent of Congress and the amendment by Pub. L. 111-383, §814(b)(2)(A). See above.

Subsec. (c)(6). Pub. L. 111-383, §814(b)(2)(A), redesignated par. (5) as (6).

Subsec. (c)(7). Pub. L. 112-81, §801(a)(2), as amended by Pub. L. 112-239, §1076(a)(10)(B), added par. (7).

2009—Subsec. (a). Pub. L. 111-23, §204(a), substituted “may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program, or otherwise be initiated prior to Milestone B approval, or Key Decision Point B approval in the case of a space program,” for “may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program,” in introductory provisions.

Subsec. (a)(3). Pub. L. 111-23, §201(e)(1), struck out “and” at end.

Subsec. (a)(4). Pub. L. 111-23, §201(e)(3), added par. (4). Former par. (4) redesignated (5).

Pub. L. 111-23, §101(d)(3), inserted “, with the concurrence of the Director of Cost Assessment and Program Evaluation,” after “has been submitted”.

Subsec. (a)(5). Pub. L. 111-23, §201(e)(2), redesignated par. (4) as (5).

Subsec. (b). Pub. L. 111-23, §204(b), designated existing provisions as par. (1), substituted “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,” for “by at least 25 percent,” and added par. (2).

2008—Pub. L. 110-417, §813(b), renumbered section 2366b of this title as this section.

Subsec. (a)(1), (2). Pub. L. 110-417, §813(e)(1)(A), substituted “program” for “system”.

Subsec. (a)(3). Pub. L. 110-417, §813(e)(1)(B), substituted “if the program” for “if the system” and “such program” for “such system”.

Subsec. (a)(4). Pub. L. 110-417, §813(e)(1)(A), substituted “program” for “system” in two places.

Subsec. (b). Pub. L. 110-417, §813(e)(1)(C), substituted “major defense acquisition program” for “major system”, “cost of the program” for “cost of the system”, “estimate for the program” for “estimate for the system”, “the program concerned” for “the system concerned”, and “procure the program” for “procure the system”.

Subsec. (c)(1). Pub. L. 110-417, §813(e)(1)(D), substituted “major defense acquisition program” for “major system” and “2430” for “2302(5)”.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-239, div. A, title III, §322(f), Jan. 2, 2013, 126 Stat. 1695, provided that: “This section [enacting sections 2460 and 2464 of this title, amending this section and sections 2366b, 2460, and 2464 of this title, repealing sections 2460 and 2464 of this title, and amending provisions set out as a note under this section] and the amendments made by this section shall take effect on December 31, 2011, the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112-81], immediately after the enactment of that Act.”

Pub. L. 112-239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(10) is effective Dec. 31, 2011, and as if included in Pub. L. 112-81 as enacted.

EFFECTIVE DATE

Pub. L. 110-181, div. A, title IX, §943(c), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110-417, [div. A], title VIII, §813(e)(2)(B), Oct. 14, 2008, 122 Stat. 4528, provided that: “Section 2366b [now 2366a] of title 10, United States Code, as added by subsection (a), shall apply to major defense acquisition programs on and after March 1, 2008. In the case of the certification required by paragraph (2) of subsection (a) of such section, during the period prior to the completion of the first quadrennial roles and missions review required by section 118b of title 10, United States Code, the certification required by that paragraph shall be that the system is being executed by an entity with a relevant core competency as identified by the Secretary of Defense.”

REQUIREMENTS PRIOR TO LOW-RATE INITIAL PRODUCTION

Pub. L. 112-81, div. A, title VIII, §801(c), Dec. 31, 2011, 125 Stat. 1483, as amended by Pub. L. 112-239, div. A, title III, §322(e)(3), Jan. 2, 2013, 126 Stat. 1695, provided that: “Prior to entering into a contract for low-rate initial production of a major defense acquisition program, the Secretary of Defense shall ensure that the detailed requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements, have been defined.”

GUIDANCE

Pub. L. 112-81, div. A, title VIII, §801(d), Dec. 31, 2011, 125 Stat. 1483, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 31,

2011], the Secretary of Defense shall issue guidance implementing the amendments made by subsections (a) and (b) [amending this section and section 2366b of this title], and subsection (c) [set out above], in a manner that is consistent across the Department of Defense.”

APPLICATION TO ONGOING PROGRAMS

Pub. L. 111-23, title II, §204(c), May 22, 2009, 123 Stat. 1723, as amended by Pub. L. 111-383, div. A, title VIII, §813(c), Jan. 7, 2011, 124 Stat. 4265, which related to application of the requirements of this section to certain major defense acquisition programs initiated before May 22, 2009, was repealed by Pub. L. 112-81, div. A, title VIII, §819(a), Dec. 31, 2011, 125 Stat. 1501.

REVIEW OF DEPARTMENT OF DEFENSE ACQUISITION DIRECTIVES

Pub. L. 110-181, div. A, title IX, §943(b), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110-417, [div. A], title VIII, §813(e)(2)(A), Oct. 14, 2008, 122 Stat. 4528, provided that: “Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall review Department of Defense Directive 5000.1 and associated guidance, and the manner in which such directive and guidance have been implemented, and take appropriate steps to ensure that the Department does not commence a technology development program for a major defense acquisition program without Milestone A approval (or Key Decision Point A approval in the case of a space program).”

§ 2366b. Major defense acquisition programs: certification required before Milestone B approval

(a) CERTIFICATION.—A major defense acquisition program may not receive Milestone B approval until the milestone decision authority—

(1) has received a business case analysis and certifies on the basis of the analysis that—

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program’s mission using alternative systems;

(B) appropriate trade-offs among cost, schedule, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total acquisition cost in the context of the total resources available during the period covered by the future-years defense program submitted during the fiscal year in which the certification is made;

(C) reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program; and

(D) funding is available to execute the product development and production plan under the program, through the period covered by the future-years defense program submitted during the fiscal year in which the certification is made, consistent with the estimates described in subparagraph (C) for the program;

(2) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission;

(3) further certifies that—

(A) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(B) the Department of Defense has completed an analysis of alternatives with respect to the program;

(C) the Joint Requirements Oversight Council has accomplished its duties with respect to the program pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program;

(D) the technology in the program has been demonstrated in a relevant environment, as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation;

(E) life-cycle sustainment planning, including corrosion prevention and mitigation planning, has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program, and any alternatives, and that such costs are reasonable and have been accurately estimated;

(F) an estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements;

(G) there is a plan to mitigate and account for any costs in connection with any anticipated de-certification of cryptographic systems and components during the production and procurement of the major defense acquisition program to be acquired; and

(H) the program complies with all relevant policies, regulations, and directives of the Department of Defense; and

(4) in the case of a space system, performs a cost benefit analysis for any new or follow-on satellite system using a dedicated ground control system instead of a shared ground control system, except that no cost benefit analysis is required to be performed under this paragraph for any Milestone B approval of a space system after December 31, 2019.

(b) CHANGES TO CERTIFICATION.—(1) The program manager for a major defense acquisition program that has received certification under subsection (a) shall immediately notify the milestone decision authority of any changes to the program or a designated major subprogram of such program that—

(A) alter the substantive basis for the certification of the milestone decision authority relating to any component of such certification specified in paragraph (1) or (2) of subsection (a); or

(B) otherwise cause the program or subprogram to deviate significantly from the material provided to the milestone decision authority in support of such certification.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may withdraw the certification concerned or rescind