[§§ 2397 to 2397c. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(1), Feb. 10, 1996, 110 Stat. 664]

Section 2397, added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1291; amended Pub. L. 99–145, title IX, § 922, Nov. 8, 1985, 99 Stat. 693; Pub. L. 100–26, § 7(j)(5), (k)(2), Apr. 21, 1987, 101 Stat. 283, 284; Pub. L. 102–25, title VII, § 701(d)(6), Apr. 6, 1991, 105 Stat. 114; Pub. L. 102–484, div. A, title X, § 1052(29), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title IV, § 4401(d), title VIII, § 8105(d), Oct. 13, 1994, 108 Stat. 3348, 3392, related to filing of certain reports by employees or former employees of defense contractors.

Section 2397a, added Pub. L. 99–145, title IX, § 923(a)(1), Nov. 8, 1985, 99 Stat. 695; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–280, § 10(b), May 4, 1990, 104 Stat. 162, related to requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors.

Section 2397b, added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 821, Dec. 4, 1987, 101 Stat. 1132; Pub. L. 103–355, title VIII, § 8105(e), Oct. 13, 1994, 108 Stat. 3392, related to limitations on employment by contractors of certain former Department of Defense procurement officials.

Section 2397c, added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–159, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–159; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3938, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 103–355, title VIII, § 8105(f), Oct. 13, 1994, 108 Stat. 3392, related to requirements for defense contractors concerning former Department of Defense officials.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2302 of this title.

[§ 2398. Renumbered § 2922c]

[§ 2398a. Renumbered § 2922d]

§ 2399. Operational test and evaluation of defense acquisition programs

(a) CONDITION FOR PROCEEDING BEYOND LOW-RATE INITIAL PRODUCTION.—(1) The Secretary of Defense shall provide that a covered major defense acquisition program or a covered designated major subprogram may not proceed beyond low-rate initial production until initial operational test and evaluation of the program or subprogram is completed.

(2) In this subsection:

(A) The term ''covered major defense acquisition program'' means a major defense acquisition program that involves the acquisition of a weapon system that is a major system within the meaning of that term in section 2302(5) of this title.

(B) The term ''covered designated major subprogram'' means a major subprogram designated under section 2430a(a)(1) of this title that is a major subprogram of a covered major defense acquisition program.

(b) OPERATIONAL TEST AND EVALUATION.—(1) Operational testing of a major defense acquisition program may not be conducted until the Director of Operational Test and Evaluation of the Department of Defense approves (in writing) the adequacy of the plans (including the projected level of funding) for operational test and evaluation to be conducted in connection with that program.

(2) The Director shall analyze the results of the operational test and evaluation conducted for each major defense acquisition program. At the conclusion of such testing, the Director shall prepare a report stating—

(A) the opinion of the Director as to—

(i) whether the test and evaluation performed were adequate; and

(ii) whether the results of such test and evaluation confirm that the items or components actually tested are effective and suitable for combat; and

(B) additional information on the operational capabilities of the items or components that the Director considers appropriate based on the testing conducted.

(3) The Director shall submit each report under paragraph (2) to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the congressional defense committees. Each such report shall be submitted to those committees in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary and Under Secretary and shall be accompanied by such comments as the Secretary may wish to make on the report.

(4) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program under paragraph (2) and the congressional defense committees have received that report.

(5) If, before a final decision described in paragraph (4) is made for a major defense acquisition program, a decision is made within the Department of Defense to proceed to operational use of that program or to make procurement funds available for that program, the Director shall submit to the Secretary of Defense and the congressional defense committees the report with respect to that program under paragraph (2) as soon as practicable after the decision described in this paragraph is made.

(6) In this subsection, the term ''major defense acquisition program'' has the meaning given that term in section 139(a)(2)(B) of this title.

(c) DETERMINATION OF QUANTITY OF ARTICLES REQUIRED FOR OPERATIONAL TESTING.—The quantity of articles of a new system that are to be procured for operational testing shall be determined by—

(1) the Director of Operational Test and Evaluation of the Department of Defense, in the case of a new system that is a major defense acquisition program (as defined in section 139(a)(2)(B) of this title); or

(2) the operational test and evaluation agency of the military department concerned, in the case of a new system that is not a major defense acquisition program.

(d) IMPARTIALITY OF CONTRACTOR TESTING PERSONNEL.—In the case of a major defense acquisition program (as defined in subsection (a)(2)), 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.

(e) IMPARTIAL CONTRACTED ADVISORY AND ASSISTANCE SERVICES.—(1) The Director may not contract with any person for advisory and assistance services with regard to the test and evaluation of a system if that person participated in (or is participating in) the development, production, or testing of such system for a military department or Defense Agency (or for another contractor of the Department of Defense).

(2) The Director may waive the limitation under paragraph (1) in any case if the Director determines in writing that sufficient steps have been taken to ensure the impartiality of the contractor in providing the services. The Inspector General of the Department of Defense shall review each such waiver and shall include in the Inspector General's semi-annual report an assessment of those waivers made since the last such report.

(3)(A) A contractor that has participated in (or is participating in) the development, production, or testing of a system for a military department or Defense Agency (or for another contractor of the Department of Defense) may not be involved (in any way) in the establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation.

(B) The limitation in subparagraph (A) does not apply to a contractor that has participated in such development, production, or testing solely in testing for the Federal Government.

(f) SOURCE OF FUNDS FOR TESTING.—The costs for all tests required under subsection (a) shall be paid from funds available for the system being tested.

(g) DIRECTOR'S ANNUAL REPORT.—As part of the annual report of the Director under section 139 of this title, the Director shall describe for each program covered in the report the status of test and evaluation activities in comparison with the test and evaluation master plan for that program, as approved by the Director. The Director shall include in such annual report a description of each waiver granted under subsection (e)(2) since the last such report.

(h) OPERATIONAL TEST AND EVALUATION DEFINED.—In this section, the term ''operational test and evaluation'' has the meaning given that term in section 139(a)(2)(A) of this title. For purposes of subsection (a), that term does not include an operational assessment based exclusively on—

(1) computer modeling;

(2) simulation; or

(3) an analysis of system requirements, engineering proposals, design specifications, or any other information contained in program documents.

(Added Pub. L. 101–189, div. A, title VIII, § 802(a)(1), Nov. 29, 1989, 103 Stat. 1484; amended Pub. L. 102–484, div. A, title VIII, § 819, Oct. 23, 1992, 106 Stat. 2458; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title X, § 1070(a)(11), (f), Oct. 5, 1994, 108 Stat. 2856, 2859; Pub. L. 104–106, div. A, title XV, § 1502(a)(19), 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 X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title X, § 1062(a)(9), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, § 1043(b)(14), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 109–364, div. A, title II, § 231(a), Oct. 17, 2006, 120 Stat. 2131; Pub. L. 111–383, div. A, title VIII, § 814(d), Jan. 7, 2011, 124 Stat. 4267.)

PRIOR PROVISIONS

A prior section 2399, added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293, which related to limitation on availability of appropriations to reimburse a contractor for the cost of commercial insurance, was repealed by Pub. L. 100–370, § 1(f)(2)(B), July 19, 1988, 102 Stat. 846, and was restated in section 2324(e)(1)(L) of this title by section 1(f)(2)(A) of Pub. L. 100–370.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 amended subsec. (a) generally. Prior to amendment, text read as follows:

''(1) The Secretary of Defense shall provide that a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed.

''(2) In this subsection, the term 'major defense acquisition program' means a conventional weapons system that—

''(A) is a major system within the meaning of that term in section 2302(5) of this title; and

''(B) is designed for use in combat.''

2006—Subsec. (b)(2). Pub. L. 109–364, § 231(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Director shall analyze the results of the operational test and evaluation conducted for each major defense acquisition program. At the conclusion of such testing, the Director shall prepare a report stating the opinion of the Director as to—

''(A) whether the test and evaluation performed were adequate; and

''(B) whether the results of such test and evaluation confirm that the items or components actually tested are effective and suitable for combat.''

Subsec. (b)(5), (6). Pub. L. 109–364, § 231(a)(2), (3), added par. (5) and redesignated former par. (5) as (6).

2003—Subsec. (h). Pub. L. 108–136 substituted ''Operational Test and Evaluation Defined'' for ''Definitions'' in heading, struck out introductory provisions which read ''In this section:'', substituted ''In this section, 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''.