

retary of the military department concerned shall ensure that the program capability document supporting a Milestone B or subsequent decision for a major defense acquisition program may not be approved until the chief of the armed force concerned determines in writing that the requirements in the document are necessary and realistic in relation to the program cost and fielding targets established under section 2448a(a) of this title.

(2) Consistent with the performance of duties under subsection (a), the Chief of the armed force concerned, or in the case of a joint program the chiefs of the armed forces concerned, with respect to major defense acquisition programs, shall—

(A) concur with the need for a material solution as identified in the Material Development Decision Review prior to entry into the Material Solution Analysis Phase under Department of Defense Instruction 5000.02;

(B) concur with the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program before Milestone A approval is granted under section 2366a of this title;

(C) concur that appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost before Milestone B approval is granted under section 2366b of this title; and

(D) concur that the requirements in the program capability document are necessary and realistic in relation to program cost and fielding targets as required by paragraph (1) before Milestone C approval is granted.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to affect the assignment of functions under section 7014(c)(1)(A), section 8014(c)(1)(A), or section 9014(c)(1)(A) of this title, except as explicitly provided in this section.

(d) **DEFINITIONS.**—In this section:

(1) The term “requirements creep” means the addition of new technical or operational specifications after a requirements document is approved by the appropriate validation authority for the requirements document.

(2) The term “requirements document” means a document produced in the requirements process that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—

(A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;

(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

(C) identifies production attributes required for a single increment of a program.

(3) The term “program capability document” has the meaning provided in section 2446a(b)(5) of this title.

(Added Pub. L. 111-383, div. A, title VIII, §861(a), Jan. 7, 2011, 124 Stat. 4289; amended Pub. L. 112-239, div. A, title IX, §951(c), Jan. 2, 2013, 126 Stat. 1891; Pub. L. 114-92, div. A, title VIII, §802(b), Nov. 25, 2015, 129 Stat. 879; Pub. L. 114-328, div. A, title VIII, §807(c), Dec. 23, 2016, 130 Stat. 2261; Pub. L. 115-91, div. A, title VIII, §833, Dec. 12, 2017, 131 Stat. 1468; Pub. L. 115-232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840.)

PRIOR PROVISIONS

A prior section 2547 was renumbered section 2557 of this title.

AMENDMENTS

2018—Subsec. (c). Pub. L. 115-232 substituted “section 7014(c)(1)(A), section 8014(c)(1)(A), or section 9014(c)(1)(A)” for “section 3014(c)(1)(A), section 5014(c)(1)(A), or section 8014(c)(1)(A)”.

2017—Subsec. (b). Pub. L. 115-91 designated existing provisions as par. (1) and added par. (2).

2016—Subsecs. (b), (c). Pub. L. 114-328, §807(c)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 114-328, §807(c)(1), redesignated subsec. (c) as (d).

Subsec. (d)(3). Pub. L. 114-328, §807(c)(3), added par. (3).

2015—Subsec. (a)(2) to (5). Pub. L. 114-92, §802(b)(1), (2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 114-92, §802(b)(1), (3), redesignated par. (5) as (6) and substituted “The development and management” for “The development”. Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 114-92, §802(b)(1), redesignated par. (6) as (7).

2013—Subsec. (a)(1). Pub. L. 112-239, §951(c)(1), substituted “of requirements for equipping the armed force concerned” for “of requirements relating to the defense acquisition system”.

Subsec. (a)(3) to (6). Pub. L. 112-239, §951(c)(2), (3), added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

§ 2548. Performance assessments of the defense acquisition system

(a) **PERFORMANCE ASSESSMENTS REQUIRED.**—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Director of Procurement and Acquisition Policy, and the Director of the Office of Performance Assessment and Root Cause Analysis, shall issue guidance, with detailed implementation instructions, for the Department of Defense to provide for periodic independent performance assessments of elements of the defense acquisition system for the purpose of—

(1) determining the extent to which such elements of the defense acquisition system deliver value to the Department of Defense, taking into consideration the performance elements identified in subsection (b);

(2) assisting senior officials of the Department of Defense in identifying and developing

lessons learned from best practices and shortcomings in the performance of such elements of the defense acquisition system; and

(3) assisting senior officials of the Department of Defense in developing acquisition workforce excellence under section 1701a of this title.

(b) AREAS CONSIDERED IN PERFORMANCE ASSESSMENTS.—(1) Each performance assessment conducted pursuant to subsection (a) shall consider, at a minimum—

(A) the extent to which acquisitions conducted by the element of the defense acquisition system under review meet applicable cost, schedule, and performance objectives; and

(B) the staffing and quality of the acquisition workforce and the effectiveness of the management of the acquisition workforce, including workforce incentives and career paths.

(2) The Secretary of Defense shall ensure that the performance assessments required by this section are appropriately tailored to reflect the diverse nature of the work performed by each element of the defense acquisition system. In addition to the mandatory areas under paragraph (1), a performance assessment may consider, as appropriate, specific areas of acquisition concern, such as—

(A) the selection of contractors, including—

(i) the extent of competition and the use of exceptions to competition requirements;

(ii) compliance with Department of Defense policies regarding the participation of small business concerns and various categories of small business concerns, including the use of contract bundling and the availability of non-bundled contract vehicles;

(iii) the quality of market research;

(iv) the effective consideration of contractor past performance; and

(v) the number of bid protests, the extent to which such bid protests have been successful, and the reasons for such success;

(B) the negotiation of contracts, including—

(i) the appropriate application of section 2306a of this title (relating to truth in negotiations);

(ii) the appropriate use of contract types appropriate to specific procurements;

(iii) the appropriate use of performance requirements;

(iv) the appropriate acquisition of technical data and other rights and assets necessary to support long-term sustainment and follow-on procurement; and

(v) the timely definitization of any un-definitized contract actions; and

(C) the management of contractor performance, including—

(i) the assignment of appropriately qualified contracting officer representatives and other contract management personnel;

(ii) the extent of contract disputes, the reasons for such disputes, and the extent to which they have been successfully addressed;

(iii) the appropriate consideration of long-term sustainment and energy efficiency objectives; and

(iv) the appropriate use of integrated testing.

(c) CONTENTS OF GUIDANCE.—The guidance issued pursuant to subsection (a) shall ensure that each element of the defense acquisition system is subject to a performance assessment under this section not less often than once every four years, and shall address, at a minimum—

(1) the designation of elements of the defense acquisition system that are subject to performance assessment at an organizational level that ensures such assessments can be performed in an efficient and integrated manner;

(2) the frequency with which such performance assessments should be conducted;

(3) goals, standards, tools, and metrics for use in conducting performance assessments;

(4) the composition of the teams designated to perform performance assessments;

(5) any phase-in requirements needed to ensure that qualified staff are available to perform performance assessments;

(6) procedures for tracking the implementation of recommendations made pursuant to performance assessments;

(7) procedures for developing and disseminating lessons learned from performance assessments; and

(8) procedures for ensuring that information from performance assessments are retained electronically and are provided in a timely manner to the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Director of the Office of Performance Assessment and Root Cause Analysis as needed to assist them in performing their responsibilities under this section.

(d) PERFORMANCE GOALS UNDER GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The annual performance plan prepared by the Department of Defense pursuant to section 1115 of title 31 shall include appropriate performance goals for elements of the defense acquisition system.

(e) REPORTING REQUIREMENT.—The annual report prepared by the Secretary of Defense pursuant to section 1116 of title 31 shall address the Department's success in achieving performance goals established pursuant to such section for elements of the defense acquisition system.

(Added Pub. L. 111-383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4289; amended Pub. L. 112-239, div. A, title X, § 1076(d)(5), (f)(30), Jan. 2, 2013, 126 Stat. 1951, 1953; Pub. L. 115-91, div. A, title X, § 1081(a)(41), Dec. 12, 2017, 131 Stat. 1596.)

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (d), is Pub. L. 103-62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

PRIOR PROVISIONS

A prior section 2548 was renumbered section 2558 of this title.

AMENDMENTS

2017—Subsec. (e). Pub. L. 115-91 substituted “Requirement” for “Requirements” in heading, struck out introductory provisions “Beginning with fiscal year 2012—”, substituted “The annual report prepared by the Secretary” for “(1) the annual report prepared by the Secretary”, and struck out par. (2) which read as follows: “the annual report prepared by the Director of the Office of Performance Assessment and Root Cause Analysis pursuant to section 2438(f) of this title shall include information on the activities undertaken by the Department pursuant to such section, including a summary of significant findings or recommendations arising out of performance assessments.”

2013—Subsec. (a). Pub. L. 112-239, §1076(f)(30)(A)(i), substituted “The Secretary” for “Not later than 180 days after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, the Secretary” in introductory provisions.

Subsec. (a)(3). Pub. L. 112-239, §1076(f)(30)(A)(ii), inserted period at end.

Subsec. (d). Pub. L. 112-239, §1076(f)(30)(B), inserted “and” after “Government Performance” in heading and substituted “The” for “Beginning with fiscal year 2012, the” in text.

Subsec. (e)(1). Pub. L. 112-239, §1076(f)(30)(C), struck out “, United States Code,” after “title 31”.

Subsec. (e)(2). Pub. L. 112-239, §1076(d)(5), substituted “section 2438(f) of this title” for “section 103(f) of the Weapon Systems Acquisition Reform Act of 2009 (10 U.S.C. 2430 note),”.

CHAPTER 152—ISSUE OF SUPPLIES, SERVICES, AND FACILITIES

- Sec.
2551. Equipment and barracks: national veterans' organizations.
2552. Equipment for instruction and practice: American National Red Cross.
2553. Equipment and services: Presidential inaugural ceremonies.
2554. Equipment and other services: Boy Scout Jamborees.
2555. Transportation services: international Girl Scout events.
2556. Shelter for homeless; incidental services.
2557. Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance.
2558. National military associations: assistance at national conventions.
2559. Provision of medical care to foreign military and diplomatic personnel: reimbursement required; waiver for provision of reciprocal services.
2560. Aircraft and vehicles: limitation on leasing to non-Federal agencies.
2561. Humanitarian assistance.
- [2562. Repealed.]
2563. Articles and services of industrial facilities: sale to persons outside the Department of Defense.
2564. Provision of support for certain sporting events.
- 2564a. Provision of assistance for adaptive sports programs for members of the armed forces.
2565. Nuclear test monitoring equipment: furnishing to foreign governments.
2566. Space and services: provision to military welfare societies.
2567. Space and services: provision to WIC offices.
2568. Retention of combat uniforms by members deployed in support of contingency operations.
- 2568a. Damaged personal protective equipment: award to members separating from the armed forces and veterans.¹

¹ So in original. Does not conform to section catchline.

Sec.

PRIOR PROVISIONS

Chapter was comprised of subchapter I, former section 2540, and subchapter II, sections 2541 to 2553, prior to amendment by Pub. L. 104-106, div. A, title XV, §1503(a)(29), Feb. 10, 1996, 110 Stat. 512, which struck out headings for subchapters I and II.

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VI, §623(b), Aug. 13, 2018, 132 Stat. 1801, added item 2568a.

2017—Pub. L. 115-91, div. A, title X, §1081(a)(42), Dec. 12, 2017, 131 Stat. 1596, inserted period at end of item 2567.

2016—Pub. L. 114-328, div. A, title XII, §1253(a)(2)(C), div. B, title XXVIII, §2812(b), Dec. 23, 2016, 130 Stat. 2532, 2717, struck out item 2562 “Limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs” and added item 2567.

2013—Pub. L. 112-239, div. A, title X, §1076(a)(4), Jan. 2, 2013, 126 Stat. 1948, made technical amendment to directory language of Pub. L. 112-81, §589(b). See 2011 Amendment note below.

2011—Pub. L. 112-81, div. A, title V, §589(b), Dec. 31, 2011, 125 Stat. 1438, as amended by Pub. L. 112-239, div. A, title X, §1076(a)(4), Jan. 2, 2013, 126 Stat. 1948, added item 2564a.

Pub. L. 111-383, div. A, title X, §1074(b)(2), Jan. 7, 2011, 124 Stat. 4368, substituted “Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance” for “Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief” in item 2557.

2008—Pub. L. 110-181, div. A, title III, §376(b), title X, §§1063(a)(12), 1068(b)(2), Jan. 28, 2008, 122 Stat. 84, 322, 326, inserted period at end of item 2567 and then struck out item 2567 “Supplies, services, and equipment: provision in major public emergencies” and added item 2568.

2006—Pub. L. 109-364, div. A, title X, §1076(b)(2), Oct. 17, 2006, 120 Stat. 2406, added item 2567.

2002—Pub. L. 107-314, div. A, title X, §1066(b), Dec. 2, 2002, 116 Stat. 2656, added item 2566.

2001—Pub. L. 107-107, div. A, title III, §361(b)(2), title XII, §1201(a)(2), Dec. 28, 2001, 115 Stat. 1065, 1245, substituted “Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief” for “Excess nonlethal supplies: humanitarian relief” in item 2557 and substituted “2565.” for “2555.” in item 2565.

2000—Pub. L. 106-398, §1 [[div. A], title X, §1033(b)(2), title XII, §1203(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-260, 1654A-325, renumbered items 2541 to 2554 as 2551 to 2564, respectively, and added item 2555 “Nuclear test monitoring equipment: furnishing to foreign governments” at end.

1997—Pub. L. 105-85, div. A, title X, §1073(c)(2)(B), Nov. 18, 1997, 111 Stat. 1904, amended directory language of Pub. L. 104-201, §367(b). See 1996 Amendment note below.

1996—Pub. L. 104-201, div. A, title III, §367(b), Sept. 23, 1996, 110 Stat. 2497, as amended by Pub. L. 105-85, div. A, title X, §1073(c)(2)(B), Nov. 18, 1997, 111 Stat. 1904, added item 2554.

Pub. L. 104-201, div. A, title III, §366(b), Sept. 23, 1996, 110 Stat. 2496, substituted “Equipment and services: Presidential inaugural ceremonies” for “Equipment: Inaugural Committee” in item 2543.

Pub. L. 104-106, div. A, title XV, §1503(a)(29), Feb. 10, 1996, 110 Stat. 512, struck out subchapter analysis consisting of items for subchapters I “Issue to the Armed Forces” and II “Issue of Serviceable Material Other Than to the Armed Forces” and struck out headings for subchapters I “ISSUE TO THE ARMED FORCES” and II “ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO THE ARMED FORCES”.

1994—Pub. L. 103-337, div. A, title III, §339(a)(2), title XVI, §1671(b)(14), Oct. 5, 1994, 108 Stat. 2720, 3014, struck