

par. (6) substituted “subsection (d)” for “subsection (c)”, and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

§ 223. Ballistic missile defense programs: program elements

(a) PROGRAM ELEMENTS SPECIFIED BY PRESIDENT.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the amount requested for activities of the Missile Defense Agency shall be set forth in accordance with such program elements as the President may specify.

(b) SEPARATE PROGRAM ELEMENTS FOR PROGRAMS ENTERING ENGINEERING AND MANUFACTURING DEVELOPMENT.—(1) The Secretary of Defense shall ensure that each ballistic missile defense program that enters engineering and manufacturing development is assigned a separate, dedicated program element.

(2) In this subsection, the term “engineering and manufacturing development” means the period in the course of an acquisition program during which the primary objectives are to—

(A) translate the most promising design approach into a stable, interoperable, producible, supportable, and cost-effective design;

(B) validate the manufacturing or production process; and

(C) demonstrate system capabilities through testing.

(c) MANAGEMENT AND SUPPORT.—The amount requested for a fiscal year for any program element specified for that fiscal year pursuant to subsection (a) shall include requests for the amounts necessary for the management and support of the programs, projects, and activities contained in that program element.

(Added Pub. L. 105–261, div. A, title II, §235(a)(1), Oct. 17, 1998, 112 Stat. 1953; amended Pub. L. 107–107, div. A, title II, §232(a), (b), Dec. 28, 2001, 115 Stat. 1037; Pub. L. 107–314, div. A, title II, §225(b)(1)(A), Dec. 2, 2002, 116 Stat. 2486; Pub. L. 108–136, div. A, title II, §221(a), (b)(1), (c)(1), Nov. 24, 2003, 117 Stat. 1419.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 104–106, div. A, title II, §251, Feb. 10, 1996, 110 Stat. 233, which was set out as a note under section 221 of this title, prior to repeal by Pub. L. 105–261, §235(b).

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, §221(a), inserted “by President” after “Specified” in heading, substituted “such program elements as the President may specify.” for “program elements governing functional areas as follows:” in introductory provisions, and struck out pars. (1) to (6), which read as follows:

“(1) Technology.

“(2) Ballistic Missile Defense System.

“(3) Terminal Defense Segment.

“(4) Midcourse Defense Segment.

“(5) Boost Defense Segment.

“(6) Sensors Segment.”

Subsec. (b)(2). Pub. L. 108–136, §221(c)(1), substituted “means the period in the course of an acquisition program during which the” for “means the development phase whose”.

Subsec. (c). Pub. L. 108–136, §221(b)(1), substituted “for a fiscal year for any program element specified for that fiscal year pursuant to subsection (a)” for “for each program element specified in subsection (a)”.

2002—Subsec. (a). Pub. L. 107–314 substituted “Missile Defense Agency” for “Ballistic Missile Defense Organization”.

2001—Subsec. (a). Pub. L. 107–107, §232(a), substituted “in accordance with program elements governing functional areas as follows:” for “in accordance with the following program elements:” in introductory provisions, added pars. (1) to (6), and struck out former pars. (1) to (12) which read as follows:

“(1) The Patriot system.

“(2) The Navy Area system.

“(3) The Theater High-Altitude Area Defense system.

“(4) The Navy Theater Wide system.

“(5) The Medium Extended Air Defense System.

“(6) Joint Theater Missile Defense.

“(7) National Missile Defense.

“(8) Support Technologies.

“(9) Family of Systems Engineering and Integration.

“(10) Ballistic Missile Defense Technical Operations.

“(11) Threat and Countermeasures.

“(12) International Cooperative Programs.”

Subsec. (b). Pub. L. 107–107, §232(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “Amounts requested for Theater Missile Defense and National Missile Defense major defense acquisition programs shall be specified in individual, dedicated program elements, and amounts appropriated for those programs shall be available only for Ballistic Missile Defense activities.”

ACQUISITION ACCOUNTABILITY REPORTS ON THE BALLISTIC MISSILE DEFENSE SYSTEM

Pub. L. 111–383, div. A, title II, §225, Jan. 7, 2011, 124 Stat. 4170, related to acquisition baselines, elements of baselines, and annual reports, prior to repeal by Pub. L. 112–81, div. A, title II, §231(b)(1), Dec. 31, 2011, 125 Stat. 1339.

BUDGET AND ACQUISITION REQUIREMENTS FOR MISSILE DEFENSE AGENCY ACTIVITIES

Pub. L. 110–181, div. A, title II, §223, Jan. 28, 2008, 122 Stat. 39, as amended by Pub. L. 112–81, div. A, title II, §231(b)(2), Dec. 31, 2011, 125 Stat. 1339, provided that:

“(a) REVISED BUDGET STRUCTURE.—The budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year after fiscal year 2009 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) shall set forth separately amounts requested for the Missile Defense Agency for each of the following:

“(1) Research, development, test, and evaluation.

“(2) Procurement.

“(3) Operation and maintenance.

“(4) Military construction.

“(b) REVISED BUDGET STRUCTURE FOR FISCAL YEAR 2009.—The budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2009 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) shall—

“(1) identify all known and estimated operation and support costs; and

“(2) set forth separately amounts requested for the Missile Defense Agency for each of the following:

“(A) Research, development, test, and evaluation.

“(B) Procurement or advance procurement of long lead items, including for Terminal High Altitude Area Defense firing units 3 and 4, and for Standard Missile-3 Block 1A interceptors.

“(C) Military construction.

“(c) AVAILABILITY OF RDT&E FUNDS FOR FISCAL YEAR 2009.—Upon approval by the Secretary of Defense, and consistent with the plan submitted under subsection (f), funds appropriated pursuant to an authorization of

appropriations or otherwise made available for fiscal year 2009 for research, development, test, and evaluation for the Missile Defense Agency—

“(1) may be used for the fielding of ballistic missile defense capabilities approved previously by Congress; and

“(2) may not be used for—

“(A) military construction activities; or

“(B) procurement or advance procurement of long lead items, including for Terminal High Altitude Area Defense firing units 3 and 4, and for Standard Missile-3 Block 1A interceptors.

“(d) FULL FUNDING REQUIREMENT NOT APPLICABLE TO USE OF PROCUREMENT FUNDS FOR FISCAL YEARS 2009 AND 2010.—In any case in which funds appropriated pursuant to an authorization of appropriations or otherwise made available for procurement for the Missile Defense Agency for fiscal years 2009 and 2010 are used for the fielding of ballistic missile defense capabilities, the funds may be used for the fielding of those capabilities on an ‘incremental’ basis, notwithstanding any law or policy of the Department of Defense that would otherwise require a ‘full funding’ basis.

“(e) RELATIONSHIP TO OTHER LAW.—Nothing in this provision shall be construed to alter or otherwise affect in any way the applicability of the requirements and other provisions of section 234(a) through (d) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 118 Stat. 1837; [former] 10 U.S.C. 2431 note).

“(f) PLAN REQUIRED.—Not later than March 1, 2008, the Director of the Missile Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan for transitioning the Missile Defense Agency from using exclusively research, development, test, and evaluation funds to using procurement, military construction, operations and maintenance, and research, development, test, and evaluation funds for the appropriate budget activities, and for transitioning from incremental funding to full funding for fiscal years after fiscal year 2010.”

REFERENCES TO NEW NAME FOR BALLISTIC MISSILE DEFENSE ORGANIZATION

Pub. L. 107-314, div. A, title II, § 225(a), Dec. 2, 2002, 116 Stat. 2486, provided that: “Any reference to the Ballistic Missile Defense Organization in any provision of law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Missile Defense Agency.”

COOPERATIVE BALLISTIC MISSILE DEFENSE PROGRAM ELEMENT

Pub. L. 105-85, div. A, title II, § 233, Nov. 18, 1997, 111 Stat. 1663, as amended by Pub. L. 107-314, div. A, title II, § 225(b)(4)(A), Dec. 2, 2002, 116 Stat. 2486, directed the Secretary of Defense to establish the Cooperative Ballistic Missile Defense Program to support cooperative efforts between the United States and other nations that contributed to United States ballistic missile defense capabilities.

§ 223a. Ballistic missile defense programs: procurement

(a) BUDGET JUSTIFICATION MATERIALS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall specify, for each ballistic missile defense system element for which the Missile Defense Agency is engaged in planning for production and initial fielding, the following information:

(1) The production rate capabilities of the production facilities planned to be used for production of that element.

(2) The potential date of availability of that element for initial fielding.

(3) The estimated date on which the administration of the acquisition of that element is to be transferred from the Director of the Missile Defense Agency to the Secretary of a military department.

(b) FUTURE-YEARS DEFENSE PROGRAM.—The Secretary of Defense shall include in the future-years defense program submitted to Congress each year under section 221 of this title an estimate of the amount necessary for procurement for each ballistic missile defense system element, together with a discussion of the underlying factors and reasoning justifying the estimate.

(c) PERFORMANCE CRITERIA.—The Director of the Missile Defense Agency shall include in the performance criteria prescribed for planned development phases of the ballistic missile defense system and its elements a description of the intended effectiveness of each such phase against foreign adversary capabilities.

(Added Pub. L. 108-136, div. A, title II, § 223(a)(1), Nov. 24, 2003, 117 Stat. 1420; amended Pub. L. 113-291, div. A, title X, § 1060(a)(1), Dec. 19, 2014, 128 Stat. 3502.)

AMENDMENTS

2014—Subsec. (d). Pub. L. 113-291 struck out subsec. (d). Text read as follows: “The Director of Operational Test and Evaluation shall make available for review by the congressional defense committees the developmental and operational test plans established to assess the effectiveness of the ballistic missile defense system and its elements with respect to the performance criteria described in subsection (c).”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (a) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114-328, set out as a note under section 111 of this title.

IMPLEMENTATION OF REQUIREMENT FOR AVAILABILITY OF TEST PLANS

Pub. L. 108-136, div. A, title II, § 223(b), Nov. 24, 2003, 117 Stat. 1420, directed that subsec. (d) of this section was to be implemented not later than Mar. 1, 2004.

§ 224. Ballistic missile defense programs: display of amounts for research, development, test, and evaluation

(a) REQUIREMENT.—Any amount in the budget submitted to Congress under section 1105 of title 31 for any fiscal year for research, development, test, and evaluation for the integration of a ballistic missile defense element into the overall ballistic missile defense architecture shall be set forth under the account of the Department of Defense for Defense-wide research, development, test, and evaluation and, within that account, under the subaccount (or other budget activity level) for the Missile Defense Agency.

(b) TRANSFER CRITERIA.—(1) The Secretary of Defense shall establish criteria for the transfer of responsibility for a ballistic missile defense program from the Director of the Missile Defense Agency to the Secretary of a military department. The criteria established for such a transfer shall, at a minimum, address the following: