

State laws and regulations, including, but not limited to, the Arms Export Control Act [22 U.S.C. 2751 et seq.], the Export Administration Act of 1979 [50 U.S.C. 4601 et seq.], continued under Executive Order 12924 [listed in a table under 50 U.S.C. 1701], International Traffic in Arms Regulations (22 C.F.R. 120 et seq.), Export Administration Regulations (15 C.F.R. 730 et seq.), Foreign Assets Control Regulations (31 C.F.R. 500 et seq.), and the Espionage Act [act June 15, 1917, ch. 30, 40 Stat. 217, see Tables for classification].

“(e) CONDITION OF EQUIPMENT TO BE TRANSFERRED.—

“(1) AS-IS CONDITION.—The military equipment transferred under subsection (c) shall be transferred in its current ‘as-is’ condition. The Secretary is not required to repair or alter the condition of any military equipment before transferring any interest in such equipment under subsection (c).

“(2) SPARE PARTS OR EQUIPMENT.—The Secretary of the Navy is not required to provide spare parts or equipment as a result of the transfer authorized under subsection (c).

“(f) TRANSFER AT NO COST TO THE UNITED STATES.—The transfer of military equipment under subsection (c) shall be made at no cost to the United States. Any costs associated with the transfer shall be borne by the transferee.

“(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary shall require that the transfer authorized by section (c) be carried out by means of a written agreement and shall require, at a minimum, the following conditions to the transfer:

“(1) A condition stipulating that the transfer of the X-49A aircraft is for the sole purpose of further development, test, and evaluation of vectored thrust ducted propeller (hereinafter in this section referred to as ‘VTDP’) technology.

“(2) A condition providing the Government the right to procure the VTDP technology demonstrated under this program at a discounted cost based on the value of the X-49A aircraft and associated equipment at the time of transfer, with such valuation and terms determined by the Secretary.

“(3) A condition that the transferee not transfer any interest in, or transfer possession of, the military equipment transferred under subsection (b) to any other party without the prior written approval of the Secretary.

“(4) A condition that if the Secretary determines at any time that the transferee has failed to comply with a condition set forth in paragraphs (1) through (3), all items referred to in subsection (b) shall be transferred back to the Navy, at no cost to the United States.

“(5) A condition that the transferee acknowledges sole responsibility of the X-49A aircraft and associated equipment and assumes all liability for operation of the X-49A aircraft and associated equipment.

“(h) NO LIABILITY FOR THE UNITED STATES.—Upon the transfer of military equipment under subsection (b), the United States shall not be liable for any death, injury, loss, or damage that results from the use of such military equipment by any person other than the United States.

“(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a transfer under subsection (b) as the Secretary considers appropriate to protect the interests of the United States.

“(j) DEFINITIONS.—In this subsection:

“(1) The term ‘major system’ has the meaning provided in section 2302 of title 10, United States Code [see 10 U.S.C. 3041(a), (b)].

“(2) The term ‘contractual agreement’ includes contracts, grants, cooperative agreements, and other transactions.”

§ 4175. Use of test and evaluation installations by commercial entities

(a) CONTRACT AUTHORITY.—The Secretary of Defense may enter into contracts with commer-

cial entities that desire to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation.

(b) TERMINATION OR LIMITATION OF CONTRACT UNDER CERTAIN CIRCUMSTANCES.—A contract entered into under subsection (a) shall contain a provision that the Secretary of Defense may terminate, prohibit, or suspend immediately any commercial test or evaluation activity to be conducted at the Major Range and Test Facility Installation under the contract if the Secretary of Defense certifies in writing that the test or evaluation activity is or would be detrimental—

- (1) to the public health and safety;
- (2) to property (either public or private); or
- (3) to any national security interest or foreign policy interest of the United States.

(c) CONTRACT PRICE.—A contract entered into under subsection (a) shall include a provision that requires a commercial entity using a Major Range and Test Facility Installation under the contract to reimburse the Department of Defense for all direct costs to the United States that are associated with the test and evaluation activities conducted by the commercial entity under the contract. In addition, the contract may include a provision that requires the commercial entity to reimburse the Department of Defense for such indirect costs related to the use of the installation as the Secretary of Defense considers to be appropriate. The Secretary may delegate to the commander of the Major Range and Test Facility Installation the authority to determine the appropriateness of the amount of indirect costs included in such a contract provision.

(d) RETENTION OF FUNDS COLLECTED FROM COMMERCIAL USERS.—Amounts collected under subsection (c) from a commercial entity conducting test and evaluation activities at a Major Range and Test Facility Installation shall be credited to the appropriation accounts under which the costs associated with the test and evaluation activities of the commercial entity were incurred.

(e) REGULATIONS AND LIMITATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) DEFINITIONS.—In this section:

(1) The term “Major Range and Test Facility Installation” means a test and evaluation installation under the jurisdiction of the Department of Defense and designated as a Major Range and Test Facility Installation by the Secretary.

(2) The term “direct costs” includes the cost of—

- (A) labor, material, facilities, utilities, equipment, supplies, and any other resources damaged or consumed during test or evaluation activities or maintained for a particular commercial entity; and

- (B) construction specifically performed for a commercial entity to conduct test and evaluation activities.

(Added Pub. L. 103-160, div. A, title VIII, §846(a), Nov. 30, 1993, 107 Stat. 1722, §2681; amended Pub. L. 105-85, div. A, title VIII, §842, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 105-261, div. A, title VIII, §820, Oct. 17, 1998, 112 Stat. 2090; renumbered §4175 and amended Pub. L. 116-283, div. A, title XVIII,

§§ 1844(b)(1), 1845(b), Jan. 1, 2021, 134 Stat. 4245, 4247; Pub. L. 117–81, div. A, title XVIII, § 1701(u)(5)(B), (6)(B), Dec. 27, 2021, 135 Stat. 2154.)

Sec. 4204. Milestone decision authority.
4205. Weapon systems for which procurement funding requested in budget: development and procurement schedules.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, § 1845(b), as amended by Pub. L. 117–81, § 1701(u)(6)(B), renumbered section 2681 of this title as this section.

Pub. L. 116–283, § 1844(b)(1), which directed the renumbering of section 2681 of this title as section 4144 of this title instead of this section, was repealed by Pub. L. 117–81, § 1701(u)(5)(B).

1998—Subsec. (g). Pub. L. 105–261, § 820(a), struck out heading and text of subsec. (g). Text read as follows: “The authority provided to the Secretary of Defense by subsection (a) shall terminate on September 30, 2002.”

Subsec. (h). Pub. L. 105–261, § 820(b), struck out heading and text of subsec. (h). Text read as follows: “Not later than March 1, 1998, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report identifying existing and proposed procedures to ensure that the use of Major Range and Test Facility Installations by commercial entities does not compete with private sector test and evaluation services.”

1997—Subsec. (g). Pub. L. 105–85, § 842(a), substituted “2002” for “1998”.

Subsec. (h). Pub. L. 105–85, § 842(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

“(h) REPORT.—Not later than January 1, 1998, the Secretary of Defense shall submit to Congress a report describing the number and purposes of contracts entered into under subsection (a) and evaluating the extent to which the authority under this section is exercised to open Major Range and Test Facility Installations to commercial test and evaluation activities.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and note below.

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Subpart F—Major Systems, Major Defense Acquisition Programs, and Weapon Systems Development

Editorial Notes

PRIOR PROVISIONS

A prior subpart F “Special Categories of Contracting: Research, Development, Test, and Evaluation”, consisting of chapters 321 to 329, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

CHAPTER 321—GENERAL MATTERS

Sec. 4201. Major defense acquisition programs: definition; exceptions.
4202. Authority to increase definitional threshold amounts: major defense acquisition programs; major systems.
4203. Major subprograms.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 321 “RESEARCH AND DEVELOPMENT GENERALLY”, consisting of reserved section 4201, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

Statutory Notes and Related Subsidiaries

PENALTY FOR COST OVERRUNS

Pub. L. 114–92, div. A, title VIII, § 828, Nov. 25, 2015, 129 Stat. 910, as amended by Pub. L. 115–91, div. A, title VIII, § 825, Dec. 12, 2017, 131 Stat. 1466; Pub. L. 115–232, div. A, title X, § 1081(d), Aug. 13, 2018, 132 Stat. 1986; Pub. L. 116–92, div. A, title VIII, § 805(a), (b)(2), Dec. 20, 2019, 133 Stat. 1485, provided that:

“(a) IN GENERAL.—For fiscal years 2018 and 2019, the Secretary of each military department shall pay a penalty for cost overruns on the covered major defense acquisition programs of the military department.

“(b) CALCULATION OF PENALTY.—For the purposes of this section:

“(1) The amount of the cost overrun on any major defense acquisition program or subprogram in a fiscal year is the difference between the current program acquisition unit cost for the program or subprogram and the program acquisition unit cost for the program as shown in the original Baseline Estimate for the program or subprogram, multiplied by the quantity of items to be purchased under the program or subprogram, as reported in the final Selected Acquisition Report for the fiscal year in accordance with section 2432 of title 10, United States Code [now 10 U.S.C. 4351].

“(2) Cost overruns for covered major defense acquisition programs that are joint programs of more than one military department shall be allocated among the military departments in percentages determined by the Under Secretary of Defense for Acquisition and Sustainment.

“(3) The cumulative amount of cost overruns for a military department in a fiscal year is the sum of the cost overruns for all covered major defense acquisition programs of the department in the fiscal year (including cost overruns allocated to the military department in accordance with paragraph (2)).

“(4) The cost overrun penalty for a military department in a fiscal year is three percent of the cumulative amount of cost overruns of the military department in the fiscal year, as determined pursuant to paragraph (3).

“(c) TOTAL COST OVERRUN PENALTY.—Notwithstanding the amount of a cost overrun penalty determined in subsection (b), the total cost overrun penalty for a military department (including any cost overrun penalty for joint programs of military departments) for a fiscal year may not exceed \$50,000,000.

“(d) TRANSFER OF FUNDS.—

“(1) REDUCTION OF RESEARCH, DEVELOPMENT, TEST, AND EVALUATION OR PROCUREMENT ACCOUNTS.—Not later than 60 days after the end of each fiscal years 2018 through 2022, the Secretary of each military department shall reduce the research, development, test, and evaluation or procurement accounts of the military department by the amount determined under paragraph (2), and remit such amount to the Secretary of Defense.

“(2) DETERMINATION OF AMOUNTS.—The reductions to research, development, test, and evaluation or procurement accounts of a military department referred to in paragraph (1) are the reductions to such accounts necessary to equal, when combined, the cost