

§§ 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which directed the renumbering of section 2681 of this title as section 4144 of this title instead of this section, was repealed by Pub.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 of 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

overrun penalty for the fiscal year for such department determined pursuant to subsection (b)(4).

“(3) CREDITING OF FUNDS.—Any amount remitted under paragraph (1) shall be credited to the Rapid Prototyping Fund established pursuant to section 804 of this Act [set out as a note preceding section 3201 of this title].

“(e) COVERED PROGRAMS.—A major defense acquisition program is covered under this section if the original Baseline Estimate was established for such program under paragraph (1) or (2) of section 2435(d) of title 10, United States Code [now 10 U.S.C. 4214(d)], on or after May 22, 2009 (which is the date of the enactment of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23)).”

[Pub. L. 115-91, div. A, title VIII, §825(b), Dec. 12, 2017, 131 Stat. 1466, which provided that the requirements of section 828 of Pub. L. 114-92, as in effect on the day before Dec. 12, 2017, would continue to apply with respect to fiscal years beginning on or before Oct. 1, 2016, was repealed by Pub. L. 116-92, div. A, title VIII, §805(b)(1), Dec. 20, 2019, 133 Stat. 1485.]

§ 4201. Major defense acquisition programs: definition; exceptions

(a) DEFINITION.—Except as provided under subsection (b), in this part, the term “major defense acquisition program” means a Department of Defense acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and—

(1) that is designated by the Secretary of Defense as a major defense acquisition program; or

(2) in the case of a program that is not a program for the acquisition of an automated information system (either a product or a service), that is estimated by the Secretary of Defense to require—

(A) an eventual total expenditure for research, development, test, and evaluation of more than \$300,000,000 (based on fiscal year 1990 constant dollars); or

(B) an eventual total expenditure for procurement, including all planned increments or spirals, of more than \$1,800,000,000 (based on fiscal year 1990 constant dollars).

(b) EXCEPTIONS.—In this part, the term “major defense acquisition program” does not include the following:

(1) An acquisition program or project that is carried out using the rapid fielding or rapid prototyping acquisition pathway under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note).¹

(2) An acquisition program for a defense business system (as defined in section 2222(i)(1) of this title) carried out using the acquisition guidance issued pursuant to section 883(e) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2223a note).¹

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1846(b), (c), Jan. 1, 2021, 134 Stat. 4248.)

Editorial Notes

REFERENCES IN TEXT

Section 804 of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (b)(1), is

¹ See References in Text note below.

section 804 of Pub. L. 114-92, which is set out as a note preceding section 3201 of this title.

Section 883(e) of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (b)(2), is section 883(e) of Pub. L. 114-92, which is set out as a note preceding section 4571 of this title.

CODIFICATION

The text of subsec. (a) of section 2430 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1846(c)(1), was based on Pub. L. 100-26, §7(b)(2)(A), Apr. 21, 1987, 101 Stat. 279; Pub. L. 102-484, div. A, title VIII, §817(b)(1), (2), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 111-23, title II, §206(b)(1), May 22, 2009, 123 Stat. 1728; Pub. L. 114-328, div. A, title VIII, §847(a), Dec. 23, 2016, 130 Stat. 2292; Pub. L. 115-91, div. A, title VIII, §831, Dec. 12, 2017, 131 Stat. 1467.

AMENDMENTS

2021—Pub. L. 116-283, §1846(c)(1), transferred subsec. (a) of section 2430 of this title to this section, struck out par. (1) designation, inserted subsec. (a) heading, substituted “under subsection (b), in this part” for “under paragraph (2), in this chapter”, redesignated par. (2) as subsec. (b) and subpars. (A) and (B) of subsecs. (a) and (b) as pars. (1) and (2) of subsecs. (a) and (b), respectively, inserted subsec. (b) heading, and substituted “In this part” for “In this chapter” in introductory provisions of subsec. (b).

Subsec. (a)(2). Pub. L. 116-283, §1846(c)(2), substituted “to require—” for “to require”, inserted subpar. (A) designation before “an eventual total expenditure for research” and subpar. (B) designation before “an eventual total expenditure for procurement” and substituted “dollars); or” for “dollars) or”.

Subsec. (b). Pub. L. 116-283, §1846(c)(3), in introductory provisions, substituted “include the following:” for “include—”, in par. (1), substituted “An” for “an” and period at end for “; or” and in par. (2), substituted “An” for “an”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4202. Authority to increase definitional threshold amounts: major defense acquisition programs; major systems

(a) ADJUSTMENTS TO THRESHOLDS FOR MAJOR DEFENSE ACQUISITION PROGRAMS.—

(1) AUTHORITY.—The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in section 4201(a)(2) of this title on the basis of Department of Defense escalation rates.

(2) MATTERS TO BE CONSIDERED.—For purposes of section 4201(a)(2) of this title, the Secretary shall consider, as applicable, the following:

(A) The estimated level of resources required to fulfill the relevant joint military requirement, as determined by the Joint Requirements Oversight Council pursuant to section 181 of this title.

(B) The cost estimate referred to in section 4251(a)(6) of this title.

(C) The cost estimate referred to in section 4252(a)(1)(C) of this title.

(D) The cost estimate within a baseline description as required by section 4214 of this title.