

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day before Dec. 12, 2017, would continue to apply with respect to fiscal years beginning on or before Oct. 1, 2016, was repealed by Pub.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.