

is submitted to the service acquisition executive designated by the Secretary concerned under this chapter with respect to a major defense acquisition program or any designated major subprogram under the program, the service acquisition executive shall determine whether the current program acquisition unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(b) **ADDITIONAL DETERMINATION BY SERVICE ACQUISITION EXECUTIVE WHEN PROGRAM OR SUBPROGRAM IS A PROCUREMENT PROGRAM.**—When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this chapter with respect to a major defense acquisition program or any designated major subprogram under the program that is a procurement program, the service acquisition executive, in addition to the determination under subsection (a), shall determine whether the procurement unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(c) **DETERMINATION OF BREACH BY SECRETARY CONCERNED; NOTIFICATION TO CONGRESS.**—

(1) **IN GENERAL.**—If, based upon the service acquisition executive's determination, the Secretary concerned determines that the current program acquisition unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold or that the procurement unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Secretary shall notify Congress in writing of such determination and of the increase with respect to the program or subprogram concerned.

(2) **TIME FOR SUBMISSION OF NOTIFICATION TO CONGRESS.**—In the case of a determination based on a quarterly report submitted in accordance with section 4372 of this title, the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with section 4373 of this title, the Secretary shall submit the notification to Congress within 45 days after the date of that report.

(3) **INCLUSION OF DATE OF DETERMINATION.**—The Secretary shall include in the notification the date on which the determination was made.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1850(a), (g), Jan. 1, 2021, 134 Stat. 4265, 4267.)

### Editorial Notes

#### CODIFICATION

The text of subsec. (d) of section 2433 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1850(g)(1), was based on Pub. L. 97-252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; Pub. L. 98-525, title XII, § 1242(b)(4), Oct. 19, 1984, 98 Stat. 2608; Pub. L. 99-145, title XIII, § 1303(a)(2), Nov. 8,

1985, 99 Stat. 738; renumbered § 2433, Pub. L. 99-433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100-180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101-189, div. A, title VIII, § 811(a)(4), Nov. 29, 1989, 103 Stat. 1491; Pub. L. 102-484, div. A, title VIII, § 817(d)(4), Oct. 23, 1992, 106 Stat. 2457; Pub. L. 103-355, title III, §§ 3002(a)(2)(B), 3003(a)(2)(B), Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 105-85, div. A, title VIII, § 833(c), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 109-163, div. A, title VIII, § 802(b)(2), Jan. 6, 2006, 119 Stat. 3368; Pub. L. 110-417, [div. A], title VIII, § 811(c)(4), Oct. 14, 2008, 122 Stat. 4523.

#### AMENDMENTS

2021—Pub. L. 116-283, § 1850(g)(1), transferred subsec. (d) of section 2433 of this title to this section, struck out subsec. designation, and redesignated pars. (1) to (3) as subsecs. (a) to (c), respectively.

Subsec. (a). Pub. L. 116-283, § 1850(g)(2), inserted heading and substituted “under this chapter” for “under this section”.

Subsec. (b). Pub. L. 116-283, § 1850(g)(3), inserted heading and substituted “under this chapter” for “under this section” and “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, § 1850(g)(4)(B), which directed amendment of subsec. (c) by designating second sentence as par. (2) and fourth sentence as par. (3), was executed by designating second and third sentences as par. (2) and fourth sentence as par. (3) to reflect the probable intent of Congress.

Pub. L. 116-283, § 1850(g)(4)(A), inserted subsec. heading, designated first sentence as par. (1) and inserted par. heading.

Subsec. (c)(2). Pub. L. 116-283, § 1850(g)(4)(C), inserted heading and substituted “section 4372 of this title” for “subsection (b)” and “section 4373 of this title” for “subsection (c)”.

Subsec. (c)(3). Pub. L. 116-283, § 1850(g)(4)(D), inserted heading.

### 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.

### § 4375. Breach of significant cost growth threshold or critical cost growth threshold: required action

(a) **BREACH OF SIGNIFICANT COST GROWTH THRESHOLD; SUBMISSION OF A SELECTED ACQUISITION REPORT.**—

(1) **GENERAL RULE.**—Except as provided in paragraph (2), whenever the Secretary concerned determines under section 4374 of this title that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program or designated major subprogram has increased by a percentage equal to or greater than the significant cost growth threshold for the program or subprogram, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination or for the fiscal-year quarter which immediately precedes the first fiscal-year quarter ending on or after that date. The report shall include the information described in section 4351(e) of this title and shall be submitted in accordance with section 4351(f) of this title.

(2) Whenever the Secretary makes a determination referred to in paragraph (1) in the case of a major defense acquisition program or designated major subprogram during the second quarter of a fiscal year and before the date on which the President transmits the budget for the following fiscal year to Congress pursuant to section 1105 of title 31, the Secretary is not required to file a Selected Acquisition Report under paragraph (1) but shall include the information described in subsection (d) regarding that program or subprogram in the comprehensive annual Selected Acquisition Report submitted in that quarter.

(b) BREACH OF CRITICAL COST GROWTH THRESHOLD.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under section 4374 of this title) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense shall take actions consistent with the requirements of sections 4376 and 4377 of this title.

(c) PROHIBITION ON OBLIGATION OF FUNDS FOR CERTAIN PURPOSES WHEN REQUIRED ACTION NOT TAKEN.—

(1) PROHIBITION.—If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Secretary under section 4374 of this title and a Selected Acquisition Report containing the information described in subsection (d) is not submitted to Congress under subsection (a), or if a determination of an increase by a percentage equal to or greater than the critical cost growth threshold is made by the Secretary under section 4374 of this title and the certification of the Secretary of Defense is not submitted to Congress under subsection (b), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program.

(2) TERMINATION OF PROHIBITION.—The prohibition under paragraph (1) on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 8677(b)(2) of this title) beginning on the date—

(A) on which Congress receives the Selected Acquisition Report under subsection (a) with respect to that program, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in section 4374 of this title); or

(B) on which Congress has received both the Selected Acquisition Report under subsection (a) and the certification of the Secretary of Defense under section 4376 with respect to that program, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under section 4374 of this title).

(d) MATTER TO BE INCLUDED IN REPORTS.—Except as provided in subsection (e), each report

under this section with respect to a major defense acquisition program shall include the following:

(1) The name of the major defense acquisition program.

(2) The date of the preparation of the report.

(3) The program phase as of the date of the preparation of the report.

(4) The estimate of the program acquisition cost for the program (and for each designated major subprogram under the program) as shown in the Selected Acquisition Report in which the program or subprogram was first included, expressed in constant base-year dollars and in current dollars.

(5) The current program acquisition cost for the program (and for each designated major subprogram under the program) in constant base-year dollars and in current dollars.

(6) A statement of the reasons for any increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(7) The completion status of the program and each designated major subprogram under the program—

(A) expressed as the percentage that the number of years for which funds have been appropriated for the program or subprogram is of the number of years for which it is planned that funds will be appropriated for the program or subprogram; and

(B) expressed as the percentage that the amount of funds that have been appropriated for the program or subprogram is of the total amount of funds which it is planned will be appropriated for the program or subprogram.

(8) The fiscal year in which information on the program and each designated major subprogram under the program was first included in a Selected Acquisition Report (referred to in this paragraph as the “base year”) and the date of that Selected Acquisition Report in which information on the program or subprogram was first included.

(9) The type of the Baseline Estimate that was included in the baseline description under section 4214 of this title and the date of the Baseline Estimate.

(10) The current change and the total change, in dollars and expressed as a percentage, in the program acquisition unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars.

(11) The current change and the total change, in dollars and expressed as a percentage, in the procurement unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars and the procurement unit cost for the program (or for each designated major subprogram under the program) for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

(12) The quantity of end items to be acquired under the program and the current change and total change, if any, in that quantity.

(13) The identities of the military and civilian officers responsible for program management and cost control of the program.

(14) The action taken and proposed to be taken to control future cost growth of the program.

(15) Any changes made in the performance or schedule milestones of the program and the extent to which such changes have contributed to the increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(16) The following contract performance assessment information with respect to each major contract under the program or subprogram:

(A) The name of the contractor.

(B) The phase that the contract is in at the time of the preparation of the report.

(C) The percentage of work under the contract that has been completed.

(D) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

(E) The percentage by which the contract is currently ahead of or behind schedule.

(F) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the program and any designated major subprogram under the program, contributing to the changes identified and a discussion of the effect these occurrences will have on future program costs and the program schedule.

(17) In any case in which one or more problems with the software component of the program or any designated major subprogram under the program significantly contributed to the increase in program unit costs, the action taken and proposed to be taken to solve such problems.

(e) BREACH DUE TO TERMINATION OR CANCELLATION OF PROGRAM OR SUBPROGRAM.—

(1) LIMITED REPORTING.—If a program acquisition unit cost increase or a procurement unit cost increase for a major defense acquisition program or designated major subprogram that results in a report under this subsection is due to termination or cancellation of the entire program or subprogram, only the information specified in paragraphs (1) through (6) of subsection (d) and the percentage change in program acquisition unit cost or procurement unit cost that resulted in the report need be included in the report.

(2) CERTIFICATION NOT REQUIRED.—The certification of the Secretary of Defense under subsection (b) is not required to be submitted for termination or cancellation of a program or subprogram.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1850(a), (h), (i), Jan. 1, 2021, 134 Stat. 4265, 4267, 4269; Pub. L. 117-81, div. A, title XVII, §1701(c)(4), (d)(12), (o)(6)(E)(iv), Dec. 27, 2021, 135 Stat. 2136, 2137, 2148.)

## Editorial Notes

### CODIFICATION

The text of subsec. (e) of section 2433 of this title, which was transferred to this section, redesignated subsecs. (a) to (c), and amended by Pub. L. 116-283, §1850(h)(1), was based on Pub. L. 97-252, title XI, §1107(a)(1), Sept. 8, 1982, 96 Stat. 741, §139b; Pub. L. 98-525, title XII, §1242(b)(5), Oct. 19, 1984, 98 Stat. 2608; renumbered §2433, Pub. L. 99-433, title I, §101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100-180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101-189, div. A, title VIII, §811(a)(5), Nov. 29, 1989, 103 Stat. 1491; Pub. L. 102-484, div. A, title VIII, §817(d)(5), Oct. 23, 1992, 106 Stat. 2457; Pub. L. 103-35, title II, §201(i)(2), May 31, 1993, 107 Stat. 100; Pub. L. 103-355, title III, §3002(a)(2)(C), Oct. 13, 1994, 108 Stat. 3328; Pub. L. 109-163, div. A, title VIII, §802(b)(3), (c), Jan. 6, 2006, 119 Stat. 3369; Pub. L. 109-364, div. A, title II, §213(a), Oct. 17, 2006, 120 Stat. 2121; Pub. L. 110-181, div. A, title IX, §942(e), Jan. 28, 2008, 122 Stat. 288; Pub. L. 110-417, [div. A], title VIII, §811(c)(5), Oct. 14, 2008, 122 Stat. 4523; Pub. L. 111-23, title II, §206(a)(3), May 22, 2009, 123 Stat. 1728; Pub. L. 115-232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840.

The text of subsec. (g) of section 2433 of this title, which was transferred to this section, redesignated subsecs. (d) and (e), and amended by Pub. L. 116-283, §1850(i)(1), was based on Pub. L. 97-252, title XI, §1107(a)(1), Sept. 8, 1982, 96 Stat. 741, §139b; Pub. L. 98-94, title XII, §1268(1), Sept. 24, 1983, 97 Stat. 705; Pub. L. 98-525, title XII, §1242(b)(6), Oct. 19, 1984, 98 Stat. 2608; renumbered §2433, Pub. L. 99-433, title I, §101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100-180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101-189, div. A, title VIII, §811(a)(6), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 103-355, title III, §3003(e), Oct. 13, 1994, 108 Stat. 3329; Pub. L. 108-375, div. A, title VIII, §801(b)(1), Oct. 28, 2004, 118 Stat. 2004; Pub. L. 110-417, [div. A], title VIII, §811(c)(6), Oct. 14, 2008, 122 Stat. 4523; Pub. L. 111-84, div. A, title X, §1073(c)(4), Oct. 28, 2009, 123 Stat. 2474.

### AMENDMENTS

2021—Pub. L. 116-283, §1850(i)(1), transferred subsec. (g) of section 2433 of this title to this section, struck out subsec. designation, and redesignated pars. (1) and (2) as subsecs. (d) and (e), respectively.

Pub. L. 116-283, §1850(h)(1), transferred subsec. (e) of section 2433 of this title to this section, struck out subsec. designation, and redesignated pars. (1) to (3) as subsecs. (a) to (c), respectively.

Subsec. (a). Pub. L. 116-283, §1850(h)(2)(A), (B), inserted subsec. heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, inserted par. (1) heading, and substituted “Except as provided in paragraph (2),” for “Except as provided in subparagraph (B),” in par. (1).

Subsec. (a)(1). Pub. L. 116-283, §1850(h)(2)(C), as amended by Pub. L. 117-81, §1701(o)(6)(E)(iv), substituted “under section 4374 of this title” for “under subsection (d)”, “section 4351(e)” for “section 2432(e)”, and “section 4351(f)” for “section 2432(f)”.

Subsec. (a)(2). Pub. L. 116-283, §1850(h)(2)(D), substituted “paragraph (1)” for “subparagraph (A)” in two places and “subsection (d)” for “subsection (g)”.

Subsec. (b). Pub. L. 116-283, §1850(h)(3), inserted heading and substituted “section 4374 of this title” for “subsection (d)” and “sections 4376 and 4377” for “section 2433a”.

Subsec. (c). Pub. L. 116-283, §1850(h)(4)(A), (B), inserted subsec. heading, designated first and second sentences as pars. (1) and (2), respectively, and inserted par. (1) heading.

Subsec. (c)(1). Pub. L. 116-283, §1850(h)(4)(C), substituted “section 4374 of this title” for “subsection (d)” in two places, “subsection (d)” for “subsection (g)”, “subsection (a)” for “paragraph (1)”, and “subsection (b)” for “paragraph (2)”.

Subsec. (c)(2). Pub. L. 116-283, §1850(h)(4)(D)(i), inserted heading and substituted “The prohibition under paragraph (1)” for “The prohibition” in introductory provisions.

Subsec. (c)(2)(A). Pub. L. 117-81, §1701(d)(12)(A), struck out “or (b)(2)” after “subsection (a)”.

Pub. L. 116-283, §1850(h)(4)(D)(ii), substituted “subsection (a) or (b)(2)” for “paragraph (1) or (2)(B)” and “section 4374 of this title” for “subsection (d)”.

Subsec. (c)(2)(B). Pub. L. 117-81, §1701(d)(12)(B), struck out “or (b)(2)” after “subsection (a)” and substituted “section 4376” for “subsection (b)(1)”.

Pub. L. 116-283, §1850(h)(4)(D)(iii), substituted “subsection (a) or (b)(2)” for “paragraph (1) or (2)(B)”, “subsection (b)(1)” for “paragraph (2)(A)”, and “section 4374 of this title” for “subsection (d)”.

Subsec. (d). Pub. L. 116-283, §1850(i)(2)(A), (B), inserted heading, substituted “Except as provided in subsection (e), each report under this section” for “Except as provided in paragraph (2), each report under subsection (e)” in introductory provisions, and redesignated subpars. (A) to (Q) as pars. (1) to (17), respectively.

Subsec. (d)(7). Pub. L. 117-81, §1701(c)(4), substituted “under the program—

“(A) expressed as”

for “under the program (i) expressed as” and “or subprogram; and

“(B) expressed as”

for “or subprogram, and (ii) expressed as”.

Subsec. (d)(9). Pub. L. 116-283, §1850(i)(2)(C), substituted “section 4214” for “section 2435”.

Subsec. (d)(16). Pub. L. 116-283, §1850(i)(2)(D), redesignated cls. (i) to (vi) as subpars. (A) to (F), respectively.

Subsec. (e). Pub. L. 116-283, §1850(i)(3)(A)–(C), inserted subsec. heading, designated first and second sentences as pars. (1) and (2), respectively, inserted par. (1) heading, and, in par. (1), substituted “paragraphs (1) through (6) of subsection (d)” for “clauses (A) through (F) of paragraph (1)”.

Subsec. (e)(2). Pub. L. 116-283, §1850(i)(3)(D), inserted heading and substituted “subsection (b)” for “subsection (e)”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1701(c)(4), (d)(12) of Pub. L. 117-81 to take effect immediately after the amendments made by title XVIII of Pub. L. 116-283 have taken effect, see section 1701(a)(3) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and Effective Date note below.

Amendment by section 1701(o)(6)(E)(iv) of 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 Effective Date note below.

##### 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.

#### § 4376. Breach of critical cost growth threshold: reassessment of program; presumption of program termination

(a) REASSESSMENT OF PROGRAM.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated subprogram (as determined by the Secretary under section 4374 of this title) increases by a percentage equal to or greater than the critical cost growth threshold for the pro-

gram or subprogram, the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

(1) determine the root cause or causes of the critical cost growth in accordance with applicable statutory requirements and Department of Defense policies, procedures, and guidance; and

(2) in consultation with the Director of Cost Assessment and Program Evaluation, carry out an assessment of—

(A) the projected cost of completing the program if current requirements are not modified;

(B) the projected cost of completing the program based on reasonable modification of such requirements;

(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

(D) the need to reduce funding for other programs due to the growth in cost of the program.

(b) PRESUMPTION OF TERMINATION.—

(1) TERMINATION UNLESS SECRETARY SUBMITS CERTIFICATION AND REPORT.—After conducting the reassessment required by subsection (a) with respect to a major defense acquisition program, the Secretary shall terminate the program unless the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 4375(d) and (e) of this title is required to be submitted under section 4351(f) of this title, a written certification in accordance with paragraph (2).

(2) CERTIFICATION.—A certification described by this paragraph with respect to a major defense acquisition program is a written certification that—

(A) the continuation of the program is essential to the national security;

(B) there are no alternatives to the program which will provide acceptable capability to meet the joint military requirement (as defined in section 181(g)(1) of this title) at less cost;

(C) the new estimates of the program acquisition unit cost or procurement unit cost have been determined by the Director of Cost Assessment and Program Evaluation to be reasonable;

(D) the program is a higher priority than programs whose funding must be reduced to accommodate the growth in cost of the program; and

(E) the management structure for the program is adequate to manage and control program acquisition unit cost or procurement unit cost.

(3) REPORT.—A written certification under paragraph (2) shall be accompanied by a report presenting the root cause analysis and assessment carried out pursuant to subsection (a) and the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), together with supporting documentation.