

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.

(c) ACTIONS IF PROGRAM TERMINATED.—If a major defense acquisition program is terminated pursuant to subsection (b), the Secretary shall submit to Congress a written report setting forth—

- (1) an explanation of the reasons for terminating the program;
- (2) the alternatives considered to address any problems in the program; and
- (3) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1850(a), (j), Jan. 1, 2021, 134 Stat. 4265, 4269; Pub. L. 117–81, div. A, title XVII, §1701(o)(6)(E)(v), Dec. 27, 2021, 135 Stat. 2148.)

Editorial Notes

CODIFICATION

The text of subssecs. (a) and (b) of section 2433a of this title, which was transferred to this section by Pub. L. 116–283, §1850(j)(1), was based on Pub. L. 111–23, title II, §206(a)(1), May 22, 2009, 123 Stat. 1726; Pub. L. 111–383, div. A, title X, §1075(b)(35), Jan. 7, 2011, 124 Stat. 4371.

The text of subsec. (d) of section 2433a of this title, which was transferred to this section and redesignated subsec. (c) by Pub. L. 116–283, §1850(j)(2), was based on Pub. L. 111–23, title II, §206(a)(1), May 22, 2009, 123 Stat. 1726.

AMENDMENTS

2021—Pub. L. 116–283, §1850(j)(1), (2), transferred subssecs. (a), (b), and (d) of section 2433a of this title to this section and redesignated subsec. (d) as (c).

Subsec. (a). Pub. L. 116–283, §1850(j)(3)(A), substituted “section 4374” for “section 2433(d)” in introductory provisions.

Subsec. (b)(1). Pub. L. 116–283, §1850(j)(4)(A), inserted heading.

Pub. L. 116–283, §1850(j)(3)(B), as amended by Pub. L. 117–81, §1701(o)(6)(E)(v), substituted “section 4375(d) and (e)” for “section 2433(g)” and “section 4351(f)” for “section 2432(f)”.

Subsec. (b)(2), (3). Pub. L. 116–283, §1850(j)(4)(B)–(D), realigned margins and inserted headings.

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 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.

§ 4377. Breach of critical cost growth threshold: actions if program not terminated

(a) ACTIONS IF PROGRAM NOT TERMINATED.—If the Secretary elects not to terminate a major defense acquisition program pursuant to subsection (b) of section 4376 of this title, the Secretary shall—

- (1) restructure the program in a manner that addresses the root cause or causes of the crit-

ical cost growth, as identified pursuant to subsection (a) of that section, and ensures that the program has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E) of that section;

- (2) rescind the most recent Milestone approval for the program and withdraw any associated certification under section 4251 or 4252 of this title;

- (3) require a new Milestone approval for the program before taking any contract action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the program, except to the extent determined necessary by the Milestone Decision Authority, on a non-delegable basis, to ensure that the program can be restructured as intended by the Secretary without unnecessarily wasting resources;

- (4) include in the report specified in subsection (b) a description of all funding changes made as a result of the growth in cost of the program, including reductions made in funding for other programs to accommodate such cost growth; and

- (5) conduct regular reviews of the program in accordance with the requirements of section 205 of the Weapon Systems Acquisition Reform Act of 2009.

(b) IDENTIFICATION OF REPORT FOR DESCRIPTION OF FUNDING CHANGES.—For purposes of subsection (a)(4), the report specified in this subsection is the first Selected Acquisition Report for the program submitted pursuant to section 4351 of this title after the President submits a budget pursuant to section 1105 of title 31, in the calendar year following the year in which the program was restructured.

(c) INAPPLICABILITY OF CERTAIN SUBSECTION (A) REQUIREMENTS.—

(1) CONDITIONS FOR INAPPLICABILITY.—The requirements of paragraphs (2), (3), and (5) of subsection (a) shall not apply to a program or subprogram if—

(A) the Milestone Decision Authority determines in writing, on the basis of a cost assessment and root cause analysis conducted pursuant to section 4376(a) of this title, that—

- (i) but for a change in the quantity of items to be purchased under the program or subprogram, the program acquisition unit cost or procurement unit cost for the program or subprogram would not have increased by a percentage equal to or greater than the cost growth thresholds for the program or subprogram set forth in paragraph (2); and

- (ii) the change in quantity of items described in clause (i) was not made as a result of an increase in program cost, a delay in the program, or a problem meeting program requirements;

(B) the Secretary determines in writing that the cost to the Department of Defense of complying with such requirements is likely to exceed the benefits to the Department of complying with such requirements; and