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4215. [Reserved].  
4216. [Reserved].  
4217. [Reserved].  
4218. [Reserved].

### Editorial Notes

#### AMENDMENTS

2021—Pub. L. 117–81, div. A, title XVII, § 1701(f)(7), Dec. 27, 2021, 135 Stat. 2139, added item 4212 and struck out former item 4212 “Risk management and mitigation”.

### Statutory Notes and Related Subsidiaries

#### SHOULD-COST MANAGEMENT

Pub. L. 115–91, div. A, title VIII, § 837, Dec. 12, 2017, 131 Stat. 1474, provided that:

“(a) REQUIREMENT FOR REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall amend the Defense Supplement to the Federal Acquisition Regulation to provide for the appropriate use of the should-cost review process of a major weapon system in a manner that is transparent, objective, and provides for the efficiency of the systems acquisition process in the Department of the Defense.

“(b) REQUIRED ELEMENTS.—The regulations required under subsection (a) shall incorporate, at a minimum, the following elements:

“(1) A description of the features of the should-cost review process.

“(2) Establishment of a process for communicating with the prime contractor on the program the elements of a proposed should-cost review.

“(3) A method for ensuring that identified should-cost savings opportunities are based on accurate, complete, and current information and can be quantified and tracked.

“(4) A description of the training, skills, and experience that Department of Defense and contractor officials carrying out a should-cost review in subsection (a) should possess.

“(5) A method for ensuring appropriate collaboration with the contractor throughout the review process.

“(6) Establishment of review process requirements that provide for sufficient analysis and minimize any impact on program schedule.”

#### MANAGEMENT OF MANUFACTURING RISK IN MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–383, div. A, title VIII, § 812, Jan. 7, 2011, 124 Stat. 4264, as amended by Pub. L. 112–81, div. A, title VIII, § 834, Dec. 31, 2011, 125 Stat. 1506, directed the Secretary of Defense to issue, not later than 180 days after Jan. 7, 2011, comprehensive guidance on the management of manufacturing risk in major defense acquisition programs and to ensure that the acquisition workforce chapter of the annual strategic workforce plan required by former section 115b of this title included an assessment of the critical manufacturing readiness knowledge and skills needed in the acquisition workforce and a plan of action for addressing any gaps in such knowledge and skills.

#### CONGRESSIONAL NOTIFICATION OF CANCELLATION OF MAJOR AUTOMATED INFORMATION SYSTEMS

Pub. L. 109–163, div. A, title VIII, § 806, Jan. 6, 2006, 119 Stat. 3373, provided that:

“(a) REPORT REQUIRED.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not less than 60 days before cancelling a major automated information system program that has been fielded or approved to be fielded, or making a change that will significantly reduce the scope of such a program, of the proposed cancellation or change.

“(b) CONTENT.—Each notification submitted under subsection (a) with respect to a proposed cancellation or change shall include—

“(1) the specific justification for the proposed cancellation or change;

“(2) a description of the impact of the proposed cancellation or change on the ability of the Department to achieve the objectives of the program proposed for cancellation or change;

“(3) a description of the steps that the Department plans to take to achieve those objectives; and

“(4) other information relevant to the change in acquisition strategy.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘major automated information system’ has the meaning given that term in Department of Defense directive 5000.1.

“(2) The term ‘approved to be fielded’ means having received Milestone C approval.”

### § 4211. Acquisition strategy

(a) ACQUISITION STRATEGY REQUIRED.—There shall be an acquisition strategy for each major defense acquisition program, each major automated information system, and each major system approved by a milestone decision authority.

(b) RESPONSIBLE OFFICIAL.—For each acquisition strategy required by subsection (a), the Under Secretary of Defense for Acquisition and Sustainment, or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program, is responsible for issuing and maintaining the requirements for—

(1) the content of the strategy; and

(2) the review and approval process for the strategy.

(c) CONSIDERATIONS.—(1) In issuing requirements for the content of an acquisition strategy for a major defense acquisition program, major automated information system, or major system, the Under Secretary, or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program, shall ensure that—

(A) the strategy clearly describes the proposed top-level business and technical management approach for the program or system, in sufficient detail to allow the milestone decision authority to assess the viability of the proposed approach, the method of implementing laws and policies, and program objectives;

(B) the strategy contains a clear explanation of how the strategy is designed to be implemented with available resources, such as time, funding, and management capacity;

(C) the strategy is tailored to address program requirements and constraints; and

(D) the strategy considers the items listed in paragraph (2).

(2) Each strategy shall, where appropriate, consider the following:

(A) An approach that delivers required capability in increments, each depending on available mature technology, and that recognizes up front the need for future capability improvements.

(B) Acquisition approach, including industrial base considerations in accordance with section 4820 of this title.

(C) Risk management, including such methods as competitive prototyping at the system, subsystem, or component level.

(D) Business strategy, including measures to ensure competition at the system and subsystem level throughout the life-cycle of the program or system in accordance with section 4324 of this title.

(E) Contracting strategy, including—

(i) contract type and how the type selected relates to level of program risk in each acquisition phase;

(ii) how the plans for the program or system to reduce risk enable the use of fixed-price elements in subsequent contracts and the timing of the use of those fixed price elements;

(iii) market research; and

(iv) consideration of small business participation.

(F) Intellectual property strategy in accordance with sections 3771 through 3775 of this title.

(G) International involvement, including foreign military sales and cooperative opportunities, in accordance with section 2350a of this title.

(H) Multiyear procurement in accordance with sections 3501 through 3511<sup>1</sup> of this title.

(I) Integration of current intelligence assessments into the acquisition process.

(J) Requirements related to logistics, maintenance, and sustainment in accordance with sections 2464 and 2466 of this title.

(d) REVIEW.—(1) The milestone decision authority shall review and approve, as appropriate, the acquisition strategy for a major defense acquisition program, major automated information system, or major system at each of the following times:

(A) Milestone A approval.

(B) The decision to release the request for proposals for development of the program or system.

(C) Milestone B approval.

(D) Each subsequent milestone.

(E) Review of any decision to enter into full-rate production.

(F) When there has been—

(i) a significant change to the cost of the program or system;

(ii) a critical change to the cost of the program or system;

(iii) a significant change to the schedule of the program or system; or

(iv) a significant change to the performance of the program or system.

(G) Any other time considered relevant by the milestone decision authority.

(2) If the milestone decision authority revises an acquisition strategy for a program or system because of a change described in paragraph (1)(F), the milestone decision authority shall provide notice of the revision to the congressional defense committees.

(e) DEFINITIONS.—In this section:

(1) The term “Milestone A approval” means a decision to enter into technology maturation and risk reduction pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(2) The term “Milestone B approval” has the meaning provided in section 4172(e)(7) of this title.

(3) The term “milestone decision authority”, with respect to a major defense acquisition program, major automated information system, or major system, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or system, including authority to approve entry of the program or system into the next phase of the acquisition process.

(4) The term “management capacity”, with respect to a major defense acquisition program, major automated information system, or major system, means the capacity to manage the program or system through the use of highly qualified organizations and personnel with appropriate experience, knowledge, and skills.

(5) The term “significant change to the cost”, with respect to a major defense acquisition program or major system, means a significant cost growth threshold, as that term is defined in section 4371(a)(2) of this title.

(6) The term “critical change to the cost”, with respect to a major defense acquisition program or major system, means a critical cost growth threshold, as that term is defined in section 4371(a)(3) of this title.

(7) The term “significant change to the schedule”, with respect to a major defense acquisition program, major automated information system, or major system, means any schedule delay greater than six months in a reported event.

(Added Pub. L. 114-92, div. A, title VIII, § 821(a)(1), Nov. 25, 2015, 129 Stat. 897, § 2431a; amended Pub. L. 114-328, div. A, title VIII, § 848, Dec. 23, 2016, 130 Stat. 2292; Pub. L. 115-91, div. A, title X, § 1081(a)(39), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116-92, div. A, title IX, § 902(70), Dec. 20, 2019, 133 Stat. 1551; renumbered § 4211 and amended Pub. L. 116-283, div. A, title XVIII, § 1847(b)(1), (2), Jan. 1, 2021, 134 Stat. 4253; Pub. L. 117-81, div. A, title XVII, § 1701(s)(1), Dec. 27, 2021, 135 Stat. 2149.)

## Editorial Notes

### REFERENCES IN TEXT

Sections 3501 through 3511 of this title, referred to in subsec. (c)(2)(H), was, prior to amendment by Pub. L. 116-283, “section 2306b of this title”, but probably should have been amended to read “section 3501 of this title” because of the amendment by Pub. L. 117-81, div. A, title XVII, § 1701(k)(2), Dec. 27, 2021, 135 Stat. 2143, which amended section 1822 of Pub. L. 116-283 by striking subsections (b) through (l) of such section and adding a new subsec. (b) to such section which transferred section 2306b of this title to section 3501 of this title.

### AMENDMENTS

2021—Pub. L. 116-283, § 1847(b)(1)(A), renumbered section 2431a of this title as this section.

Subsec. (c)(2)(B). Pub. L. 116-283, § 1847(b)(2), formerly § 1847(b)(2)(B), as redesignated and amended by Pub. L.

<sup>1</sup> See References in Text note below.

117–81, §1701(s)(1), substituted “section 4820 of this title” for “section 2440 of this title”.

Subsec. (c)(2)(D). Pub. L. 116–283, §1847(b)(1)(B)(i)(I), substituted “section 4324” for “section 2337”.

Subsec. (c)(2)(F). Pub. L. 116–283, §1847(b)(1)(B)(i)(II), substituted “sections 3771 through 3775” for “section 2320”.

Subsec. (c)(2)(H). Pub. L. 116–283, §1847(b)(1)(B)(i)(III), substituted “sections 3501 through 3511” for “section 2306b”.

Subsec. (c)(3). Pub. L. 116–283, §1847(b)(2)(A), which directed the transfer of section 2440 of this title to subsec. (c)(3) of this section and substitution of “section 4811” for “section 2501” in text, was repealed by Pub. L. 117–81, §1701(s)(1)(A).

Subsec. (e). Pub. L. 116–283, §1847(b)(1)(C), which directed amendment of subsec. (e) by striking pars. (1) and (2) and redesignating pars. (3) to (10) as (1) to (8), respectively, was executed by striking pars. (1) and (2) and redesignating former pars. (3) to (9) as (1) to (7), respectively, to reflect the probable intent of Congress, as no par. (10) had been enacted. Prior to amendment, pars. (1) and (2) defined “major defense acquisition program” and “major system”, respectively.

Subsec. (e)(4). Pub. L. 116–283, §1847(b)(1)(B)(ii)(I), substituted “section 4172(e)(7)” for “section 2366(e)(7)”.

Subsec. (e)(7). Pub. L. 116–283, §1847(b)(1)(B)(ii)(II), substituted “section 4371(a)(2)” for “section 2433(a)(4)”.

Subsec. (e)(8). Pub. L. 116–283, §1847(b)(1)(B)(ii)(III), substituted “section 4371(a)(3)” for “section 2433(a)(5)”.

2019—Subsec. (b). Pub. L. 116–92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics” in introductory provisions.

2017—Subsec. (d)(1). Pub. L. 115–91 inserted “(1)” before “The milestone”.

2016—Subsec. (b). Pub. L. 114–328, §848(1), in introductory provisions, inserted “, or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program,” after “the Under Secretary of Defense for Acquisition, Technology, and Logistics”.

Subsec. (c)(1). Pub. L. 114–328, §848(2)(A), in introductory provisions, inserted “, or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program,” after “the Under Secretary”.

Subsec. (c)(2)(C). Pub. L. 114–328, §848(2)(B), struck out “, in accordance with section 2431b of this title” before period at end.

Subsec. (d). Pub. L. 114–328, §848(3), substituted “The” for “(1) Subject to the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, the” and, in par. (2), inserted “because of a change described in paragraph (1)(F)” after “for a program or system”.

#### 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.

#### § 4212. Risk management and mitigation in major defense acquisition programs and major systems

(a) REQUIREMENT.—The Secretary of Defense shall ensure that the initial acquisition strategy

(required under section 4211 of this title) approved by the milestone decision authority and any subsequent revisions include the following:

(1) A comprehensive approach for managing and mitigating risk (including technical, cost, and schedule risk) during each of the following periods or when determined appropriate by the milestone decision authority:

(A) The period preceding engineering manufacturing development, or its equivalent.

(B) The period preceding initial production.

(C) The period preceding full-rate production.

(2) An identification of the major sources of risk in each of the periods listed in paragraph (1) to improve programmatic decisionmaking and appropriately minimize and manage program concurrency.

(b) APPROACH TO MANAGE AND MITIGATE RISKS.—The comprehensive approach to manage and mitigate risk included in the acquisition strategy for purposes of subsection (a)(1) shall, at a minimum, include consideration of risk mitigation techniques such as the following:

(1) Prototyping (including prototyping at the system, subsystem, or component level and competitive prototyping, where appropriate) and, if prototyping at either the system, subsystem, or component level is not used, an explanation of why it is not appropriate.

(2) Modeling and simulation, the areas that modeling and simulation will assess, and identification of the need for development of any new modeling and simulation tools in order to support the comprehensive strategy.

(3) Technology demonstrations and decision points for disciplined transition of planned technologies into programs or the selection of alternative technologies.

(4) Multiple design approaches.

(5) Alternative designs, including any designs that meet requirements but do so with reduced performance.

(6) Phasing of program activities or related technology development efforts in order to address high-risk areas as early as feasible.

(7) Manufacturability and industrial base availability.

(8) Independent risk element assessments by outside subject matter experts.

(9) Schedule and funding margins for identified risks.

(c) PREFERENCE FOR PROTOTYPING.—To the maximum extent practicable and consistent with the economical use of available financial resources, the milestone decision authority for each major defense acquisition program shall ensure that the acquisition strategy for the program provides for—

(1) the production of competitive prototypes at the system or subsystem level before Milestone B approval; or

(2) if the production of competitive prototypes is not practicable, the production of single prototypes at the system or subsystem level.

(d) CONCURRENCY DEFINED.—In this section, the term “concurrency” means, with respect to