

with regard to the program, as provided in section 2366a(a)(2) of title 10, United States Code [now 10 U.S.C. 4251(a)(2)], as amended by section 823 of this Act, prior to a Milestone A decision on the program.”

GUIDANCE

Pub. L. 112-81, div. A, title VIII, §801(d), Dec. 31, 2011, 125 Stat. 1483, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall issue guidance implementing the amendments made by subsections (a) and (b) [amending this section and section 2366b of this title], and subsection (c) [set out as a note preceding section 4321 of this title], in a manner that is consistent across the Department of Defense.”

§ 4252. Major defense acquisition programs: certification required before Milestone B approval

(a) CERTIFICATIONS AND DETERMINATION REQUIRED.—A major defense acquisition program may not receive Milestone B approval until the milestone decision authority—

(1) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission;

(2) further certifies that the technology in the program has been demonstrated in a relevant environment, as determined by the milestone decision authority on the basis of an independent review and technical risk assessment conducted under section 4272 of this title;

(3) determines in writing that—

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program’s mission using alternative systems;

(B) appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost;

(C) reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program;

(D) the estimated procurement unit cost for the program and the estimated date for initial operational capability for the baseline description for the program (established under section 4214 of this title) do not exceed the program cost and fielding targets established under section 4271(a) of this title, or, if such estimated cost is higher than the program cost targets or if such estimated date is later than the fielding target, the program cost targets have been increased or the fielding target has been delayed by the milestone decision authority;

(E) funding is expected to be available to execute the product development and production plan for the program, consistent with the estimates described in subparagraph (C) for the program;

(F) appropriate market research has been conducted prior to technology development

to reduce duplication of existing technology and products;

(G) the Department of Defense has completed an analysis of alternatives with respect to the program;

(H) the Joint Requirements Oversight Council has accomplished its duties with respect to the program pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program;

(I) life-cycle sustainment planning, including corrosion prevention and mitigation planning, has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program, and any alternatives, and that such costs are reasonable and have been accurately estimated;

(J) an estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements;

(K) there is a plan to mitigate and account for any costs in connection with any anticipated de-certification of cryptographic systems and components during the production and procurement of the major defense acquisition program to be acquired;

(L) the program complies with all relevant policies, regulations, and directives of the Department of Defense;

(M) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the trade-offs made in accordance with subparagraph (B);

(N) the requirements of section 4402(e) of this title are met;

(O) appropriate actions have been taken to negotiate and enter into a contract or contract options for the technical data required to support the program; and

(P) has approved the life cycle sustainment plan required under section 4324(b) of this title.¹

(4) in the case of a space system, performs a cost benefit analysis for any new or follow-on satellite system using a dedicated ground control system instead of a shared ground control system, except that no cost benefit analysis is required to be performed under this paragraph for any Milestone B approval of a space system after December 31, 2019; and

(5) in the case of a naval vessel program, certifies compliance with the requirements of section 8669b of this title.

(b) CHANGES TO CERTIFICATIONS OR DETERMINATION.—(1) The program manager for a major defense acquisition program that has received certifications or a determination under subsection (a) shall immediately notify the milestone decision authority of any changes to the program or a designated major subprogram of such program that—

(A) alter the substantive basis for the certifications or determination of the milestone decision authority relating to any component

¹ So in original. Does not fit with par. (3) introductory provisions and period at end probably should be a semicolon.

of such certifications or determination specified in paragraph (1), (2), or (3) of subsection (a); or

(B) otherwise cause the program or subprogram to deviate significantly from the material provided to the milestone decision authority in support of such certifications or determination.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may withdraw the certifications or determination concerned or rescind Milestone B approval if the milestone decision authority determines that such certifications, determination, or approval are no longer valid.

(c) SUBMISSIONS TO CONGRESS ON MILESTONE B.—

(1) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone B approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following elements:

(A) The program cost and fielding targets established under section 4271(a) of this title.

(B) The estimated cost and schedule for the program established by the military department concerned, including—

(i) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(C) The independent estimated cost for the program established pursuant to section 3221(b)(6) of this title, and any independent estimated schedule for the program, including—

(i) the dollar values and ranges estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(D) A summary of the technical and manufacturing risks associated with the program, as determined by the military department concerned, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(E) A summary of the independent technical risk assessment conducted or approved under section 4272 of this title, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(F) A statement of whether a modular open system approach is being used for the program.

(G) An assessment of the sufficiency of developmental test and evaluation plans, including the use of automated data analytics or modeling and simulation tools and methodologies.

(H) A summary of the life cycle sustainment plan required under section 4324 of this title.

(I) Any other information the milestone decision authority considers relevant.

(2) CERTIFICATIONS AND DETERMINATIONS.—

(A) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 4351 of this title after completion of the certification.

(B) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

(3) ADDITIONAL INFORMATION.—(A) At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee an explanation of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a) with respect to a major defense acquisition program or further information or underlying documentation for the information in a brief summary report submitted under paragraph (1), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that paragraph.

(B) The explanation or information shall be submitted in unclassified form, but may include a classified annex.

(d) WAIVER FOR NATIONAL SECURITY.—(1) The milestone decision authority may, at the time of Milestone B approval or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval pursuant to subsection (b)(2), waive the applicability to a major defense acquisition program of one or more components (as specified in paragraph (1), (2), or (3) of subsection (a)) of the certification and determination requirements if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives.

(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—

(A) the waiver, the waiver determination, and the reasons for the waiver determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification and determination components specified in paragraphs (1), (2), and (3) of subsection (a) until such time as the milestone decision au-

thority determines that the program satisfies all such certification and determination components.

(3) The requirement in paragraph (2)(B) shall not apply to a program for which a certification was required pursuant to section 4377 of this title if the milestone decision authority—

(A) determines in writing that—

(i) the program has reached a stage in the acquisition process at which it would not be practicable to meet the certification component that was waived; and

(ii) the milestone decision authority has taken appropriate alternative actions to address the underlying purposes of such certification component; and

(B) submits the written determination, and an explanation of the basis for the determination, to the congressional defense committees.

(e) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all such certification requirements.

(f) NONDELEGATION.—The milestone decision authority may not delegate the certification requirement under subsection (a) or the authority to waive any component of such requirement under subsection (d).

(g) DEFINITIONS.—In this section:

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

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

(3) The term “core logistics capabilities” means the core logistics capabilities identified under section 2464(a) of this title.

(4) The term “fielding target” has the meaning given that term in section 4271(a) of this title.

(5) The term “major system component” has the meaning given that term in section 4401(b)(3) of this title.

(6) The term “congressional intelligence committees” has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 109–163, div. A, title VIII, §801(a), Jan. 6, 2006, 119 Stat. 3366, §2366a; amended Pub. L. 109–364, div. A, title VIII, §805, Oct. 17, 2006, 120 Stat. 2314; Pub. L. 110–181, div. A, title VIII, §812, Jan. 28, 2008, 122 Stat. 219; renumbered §2366b, Pub. L. 110–417, [div. A], title VIII,

§813(a), (b), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, §101(d)(4), title II, §§201(f), 205(a), May 22, 2009, 123 Stat. 1710, 1720, 1724; Pub. L. 111–383, div. A, title VIII, §§813(d)(1), 814(c), title IX, §901(j)(4), title X, §1075(k)(1), Jan. 7, 2011, 124 Stat. 4265, 4266, 4324, 4378; Pub. L. 112–81, div. A, title VIII, §§801(b), (e)(2), 819(b), Dec. 31, 2011, 125 Stat. 1483, 1484, 1501; Pub. L. 112–239, div. A, title III, §322(e)(2), title IX, §904(e)(2), Jan. 2, 2013, 126 Stat. 1695, 1867; Pub. L. 113–66, div. A, title VIII, §§821(a), 822(a), title X, §1091(b)(1), Dec. 26, 2013, 127 Stat. 809, 876; Pub. L. 114–92, div. A, title VIII, §824(a), Nov. 25, 2015, 129 Stat. 903; Pub. L. 114–328, div. A, title VIII, §§805(a)(3), 807(e), 808(b), 843, Dec. 23, 2016, 130 Stat. 2255, 2262, 2263, 2290; Pub. L. 115–91, div. A, title VIII, §§835(b)(1), 838(a)(1), Dec. 12, 2017, 131 Stat. 1471, 1474; Pub. L. 115–232, div. A, title VIII, §831(b)(3), Aug. 13, 2018, 132 Stat. 1857; Pub. L. 116–92, div. A, title VIII, §833, Dec. 20, 2019, 133 Stat. 1494; renumbered §4252 and amended Pub. L. 116–283, div. A, title VIII, §802(b), title XVIII, §§1847(d)(2), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3732, 4255, 4294; Pub. L. 117–81, div. A, title XVII, §1701(o)(6)(C)(iii), Dec. 27, 2021, 135 Stat. 2147.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, §1847(d)(2)(A), renumbered section 2366b of this title as this section.

Subsec. (a)(2). Pub. L. 116–283, §1847(d)(2)(B)(i), substituted “section 4272” for “section 2448b”.

Subsec. (a)(3)(D). Pub. L. 116–283, §1847(d)(2)(B)(ii)(I), substituted “section 4214 of this title” for “section 2435” and “section 4271(a)” for “section 2448a(a)”.

Subsec. (a)(3)(N). Pub. L. 116–283, §1847(d)(2)(B)(ii)(II), substituted “section 4402(e)” for “section 2446b(e)”.

Pub. L. 116–283, §802(b)(1)(A), struck out “and” after “met;”.

Subsec. (a)(3)(O). Pub. L. 116–283, §802(b)(1)(B), which directed amendment of subpar. (O) by substituting “; and” for period at the end, was executed by making the substitution for semicolon at end to reflect the probable intent of Congress.

Subsec. (a)(3)(P). Pub. L. 116–283, §1883(b)(2), substituted “section 4324(b)” for “section 2337(b)”.

Pub. L. 116–283, §802(b)(1)(C), added subpar. (P).

Subsec. (c)(1)(A). Pub. L. 116–283, §1847(d)(2)(C)(i)(I), substituted “section 4271(a)” for “section 2448a(a)”.

Subsec. (c)(1)(C). Pub. L. 116–283, §1847(d)(2)(C)(i)(II), substituted “section 3221(b)(6)” for “section 2334(a)(6)” in introductory provisions.

Subsec. (c)(1)(E). Pub. L. 116–283, §1847(d)(2)(C)(i)(III), substituted “section 4272” for “section 2448b”.

Subsec. (c)(1)(H). Pub. L. 116–283, §1883(b)(2), substituted “section 4324” for “section 2337”.

Pub. L. 116–283, §802(b)(2)(B), added subpar. (H). Former subpar. (H) redesignated (I).

Subsec. (c)(1)(I). Pub. L. 116–283, §802(b)(2)(A), redesignated subpar. (H) as (I).

Subsec. (c)(2)(A). Pub. L. 116–283, §1847(d)(2)(C)(ii), as amended by Pub. L. 117–81, §1701(o)(6)(C)(iii), substituted “section 4351” for “section 2432”.

Subsec. (d)(3). Pub. L. 116–283, §1847(d)(2)(D), substituted “section 4377” for “section 2433a(e)” in introductory provisions.

Subsec. (g)(1). Pub. L. 116–283, §1847(d)(2)(E)(i), redesignated par. (3) as (1) and struck out former par. (1) which defined “major defense acquisition program”.

Subsec. (g)(2). Pub. L. 116–283, §1847(d)(2)(E)(i), (ii), redesignated par. (4) as (2), substituted “section 4172(e)(7)” for “section 2366(e)(7)”, and struck out former par. (2) which defined “designated major subprogram”.

Subsec. (g)(3). Pub. L. 116–283, §1847(d)(2)(E)(i), redesignated par. (5) as (3). Former par. (3) redesignated (1).

Subsec. (g)(4). Pub. L. 116-283, §1847(d)(2)(E)(i), (iii), redesignated par. (6) as (4) and substituted “section 4271(a)” for “section 2448a(a)”. Former par. (4) redesignated (2).

Subsec. (g)(5). Pub. L. 116-283, §1847(d)(2)(E)(i), (iv), redesignated par. (7) as (5) and substituted “section 4401(b)(3)” for “section 2446a(b)(3)”. Former par. (5) redesignated (3).

Subsec. (g)(6) to (8). Pub. L. 116-283, §1847(d)(2)(E)(i), redesignated pars. (6) to (8) as (4) to (6), respectively.

2019—Subsec. (a)(5). Pub. L. 116-92 added par. (5).

2018—Subsec. (a)(3)(D). Pub. L. 115-232, §831(b)(3)(A), struck out “Secretary of Defense after a request for such increase or delay by the” before “milestone decision authority”.

Subsec. (c)(1)(A). Pub. L. 115-232, §831(b)(3)(B), struck out “by the Secretary of Defense” after “established”.

2017—Subsec. (a)(3)(O). Pub. L. 115-91, §835(b)(1), added subpar. (O).

Subsec. (c)(1)(G), (H). Pub. L. 115-91, §838(a)(1), added subpar. (G) and redesignated former subpar. (G) as (H).

2016—Subsec. (a)(2). Pub. L. 114-328, §807(e)(1), substituted “technical risk assessment conducted under section 2448b of this title” for “assessment by the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation”.

Subsec. (a)(3)(B). Pub. L. 114-328, §843(1), substituted “life-cycle cost;” for “acquisition cost in the context of the total resources available during the period covered by the future-years defense program submitted during the fiscal year in which the certification is made;”.

Subsec. (a)(3)(C). Pub. L. 114-328, §807(e)(2)(A), struck out “and” at end.

Subsec. (a)(3)(D). Pub. L. 114-328, §807(e)(2)(C), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(3)(E). Pub. L. 114-328, §843(2), which directed amendment of subpar. (D) by substituting “funding is expected to be available to execute the product development and production plan for the program,” for “funding is” and all that followed through “made,” was executed by making the substitution for “funding is available to execute the product development and production plan under the program, through the period covered by the future-years defense program submitted during the fiscal year in which the certification is made,” in subpar. (E), to reflect the probable intent of Congress and the amendment by Pub. L. 114-328, §807(e)(2)(B). See below.

Pub. L. 114-328, §807(e)(2)(B), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(3)(F) to (L). Pub. L. 114-328, §807(e)(2)(B), redesignated subpars. (E) to (K) as (F) to (L), respectively. Former subpar. (L) redesignated (M).

Subsec. (a)(3)(M). Pub. L. 114-328, §807(e)(2)(B), redesignated subpar. (L) as (M). Former subpar. (M) redesignated (N).

Pub. L. 114-328, §805(a)(3), added subpar. (M).

Subsec. (a)(3)(N). Pub. L. 114-328, §807(e)(2)(B), redesignated subpar. (M) as (N).

Subsec. (c). Pub. L. 114-328, §808(b)(1), amended subsec. (c) generally. Prior to amendment, text read as follows:

“(1) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 2432 of this title after completion of the certification.

“(2) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

“(3) At the request of any of the congressional defense committees, the Secretary of Defense shall submit to the committee an explanation of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a) with respect to a major defense acquisition program. The explanation shall be

submitted in unclassified form, but may include a classified annex.”

Subsec. (g)(6) to (8). Pub. L. 114-328, §808(b)(2), added pars. (6) to (8).

2015—Pub. L. 114-92 amended section generally. Prior to amendment, section related to certification required before Milestone B approval of major defense acquisition programs.

2013—Subsec. (a)(3)(D). Pub. L. 112-239, §904(e)(2), substituted “the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation” for “the Assistant Secretary of Defense for Research and Engineering”.

Subsec. (a)(3)(F). Pub. L. 112-239, §322(e)(2), as amended by Pub. L. 113-66, §1091(b)(1), substituted “core logistics capabilities” for “core depot-level maintenance and repair capabilities, as well as the associated logistics capabilities”.

Subsec. (a)(3)(G), (H). Pub. L. 113-66, §821(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(4). Pub. L. 113-66, §822(a), added par. (4).

2011—Pub. L. 112-81, §801(e)(2)(A), struck out “or Key Decision Point B” after “Milestone B” in section catchline.

Subsec. (a). Pub. L. 112-81, §801(e)(2)(B), struck out “, or Key Decision Point B approval in the case of a space program,” after “Milestone B approval” in introductory provisions.

Subsec. (a)(3)(D). Pub. L. 111-383, §901(j)(4), substituted “Assistant Secretary of Defense for Research and Engineering” for “Director of Defense Research and Engineering”.

Subsec. (a)(3)(E) to (G). Pub. L. 112-81, §801(b)(1), added subpars. (E) and (F) and redesignated former subpar. (E) as (G).

Subsec. (b)(1). Pub. L. 111-383, §814(c)(1)(A), substituted “any changes to the program or a designated major subprogram of such program” for “any changes to the program” in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 111-383, §814(c)(1)(B), substituted “otherwise cause the program or subprogram” for “otherwise cause the program”.

Subsec. (b)(2). Pub. L. 112-81, §801(e)(2)(C), struck out “(or Key Decision Point B approval in the case of a space program)” after “Milestone B approval”.

Subsec. (d)(1). Pub. L. 112-81, §801(e)(2)(C), struck out “(or Key Decision Point B approval in the case of a space program)” after “Milestone B approval” in two places.

Pub. L. 111-383, §813(d)(1)(A), substituted “(as specified in paragraph (1), (2), or (3) of subsection (a))” for “(as specified in paragraph (1) or (2) of subsection (a))”.

Subsec. (d)(2)(B). Pub. L. 111-383, §1075(k)(1), which directed amendment of directory language of Pub. L. 111-23, §205(a)(1)(B), resulting in substitution of “paragraphs (1), (2), and (3)” for “paragraphs (1) and (2)” in text, was not executed because of the prior identical amendment by Pub. L. 111-383, §813(d)(1)(B). See below.

Pub. L. 111-383, §813(d)(1)(B), substituted “specified in paragraphs (1), (2), and (3) of subsection (a)” for “specified in paragraphs (1) and (2) of subsection (a)”.

Subsec. (d)(3). Pub. L. 112-81, §819(b), added par. (3).

Subsec. (g)(2) to (4). Pub. L. 111-383, §814(c)(2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (g)(5). Pub. L. 112-81, §801(b)(2), added par. (5) and struck out former par. (5) which read as follows: “The term ‘Key Decision Point B’ means the official program initiation of a National Security Space program of the Department of Defense, which triggers a formal review to determine maturity of technology and the program’s readiness to begin the preliminary system design.”

Pub. L. 111-383, §814(c)(2)(A), redesignated par. (4) as (5).

2009—Subsec. (a)(1)(B). Pub. L. 111-23, §201(f), inserted “appropriate trade-offs among cost, schedule, and performance objectives have been made to ensure that” before “the program is affordable”.

Subsec. (a)(1)(C). Pub. L. 111-23, §101(d)(4), inserted “, with the concurrence of the Director of Cost Assessment and Program Evaluation,” before “the product”.

Subsec. (a)(1)(D). Pub. L. 111-23, §205(a)(3)(A), struck out “and” at end.

Subsec. (a)(2), (3). Pub. L. 111-23, §205(a)(3)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3)(D). Pub. L. 111-23, §205(a)(3)(D)(i), substituted “, as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and” for semicolon.

Subsec. (a)(3)(E), (F). Pub. L. 111-23, §205(a)(3)(D)(ii), (iii), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: “the program demonstrates a high likelihood of accomplishing its intended mission; and”.

Subsec. (d). Pub. L. 111-23, §205(a)(1), designated existing provisions as par. (1) and substituted par. (2) for “Whenever the milestone decision authority makes such a determination and authorizes such a waiver, the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized.”

Subsecs. (e) to (g). Pub. L. 111-23, §205(a)(2), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2008—Pub. L. 110-417, §813(a), (b), renumbered section 2366a of this title as this section.

Subsec. (a). Pub. L. 110-181, §812(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of pars. (1) to (10) relating to required certifications by milestone decision authority for major defense acquisition program to receive Milestone B approval, or Key Decision Point B approval in the case of a space program.

Subsec. (b). Pub. L. 110-181, §812(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 110-181, §812(4), designated existing provisions as par. (1) and added par. (2).

Pub. L. 110-181, §812(2), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110-181, §812(5), substituted “authority may, at the time of Milestone B approval (or Key Decision Point B approval in the case of a space program) or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval (or Key Decision Point B approval in the case of a space program) pursuant to subsection (b)(2), waive” for “authority may waive” and “paragraph (1) or (2)” for “paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (9)”.

Pub. L. 110-181, §812(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110-181, §812(6), substituted “subsection (d)” for “subsection (c)”.

Pub. L. 110-181, §812(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 110-181, §812(2), redesignated subsec. (e) as (f).

2006—Subsec. (a)(1) to (7). Pub. L. 109-364, §805(a)(1)–(3), added par. (1) and redesignated former pars. (1) to (6) as (2) to (7), respectively. Former par. (7) redesignated (10).

Subsec. (a)(8), (9). Pub. L. 109-364, §805(a)(4), (5), added pars. (8) and (9).

Subsec. (a)(10). Pub. L. 109-364, §805(a)(1), redesignated par. (7) as (10).

Subsec. (c). Pub. L. 109-364, §805(b), substituted “(5), (6), (7), (8), or (9)” for “(5), or (6)”.

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 sections 1847(d)(2) and 1883(b)(2) of 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.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-91, div. A, title VIII, §835(b)(2), Dec. 12, 2017, 131 Stat. 1471, provided that: “Section 2366b(a)(3)(O) of title 10, United States Code [now 10 U.S.C. 4252(a)(3)(O)], as added by paragraph (1), shall apply with respect to any major defense acquisition program receiving Milestone B approval on or after the date occurring one year after the date of the enactment of this Act [Dec. 12, 2017].”

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113-66, div. A, title VIII, §821(b), Dec. 26, 2013, 127 Stat. 809, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 26, 2013], and shall apply with respect to major defense acquisition programs which are subject to Milestone B approval on or after the date occurring six months after the date of the enactment of this Act.”

Pub. L. 113-66, div. A, title X, §1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(1) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112-239 as enacted.

Amendment by section 322(e)(2) of Pub. L. 112-239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112-81, see section 322(f) of Pub. L. 112-239, set out as an note under section 4251 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title VIII, §813(d)(1), Jan. 7, 2011, 124 Stat. 4265, provided that the amendment made by section 813(d)(1) is effective as of May 22, 2009.

Amendment by section 901(j)(4) of Pub. L. 111-383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111-383, set out as a note under section 131 of this title.

Pub. L. 111-383, div. A, title X, §1075(k), Jan. 7, 2011, 124 Stat. 4378, provided that the amendment made by section 1075(k)(1) is effective as of May 22, 2009, and as if included in Pub. L. 111-23 as enacted.

RESPONSIBILITY FOR CONDUCTING ASSESSMENTS

Pub. L. 115-91, div. A, title VIII, §838(a)(3), Dec. 12, 2017, 131 Stat. 1474, provided that: “For purposes of the sufficiency assessments required by section 2366b(c)(1) [now 10 U.S.C. 4252(c)(1)] and section 2366c(a)(4) [now 10 U.S.C. 4253(a)(4)] of such title [meaning title 10, United States Code], as added by paragraphs (1) and (2), with respect to a major defense acquisition program—

“(A) if the milestone decision authority for the program is the service acquisition executive of the military department that is managing the program, the sufficiency assessment shall be conducted by the senior official within the military department with responsibility for developmental testing; and

“(B) if the milestone decision authority for the program is the Under Secretary of Defense for Acquisition and Sustainment, the sufficiency assessment shall be conducted by the senior Department of Defense official with responsibility for developmental testing.”

GUIDANCE

Pub. L. 115-91, div. A, title VIII, §838(a)(4), Dec. 12, 2017, 131 Stat. 1475, provided that: “Within one year after the date of the enactment of this Act [Dec. 12, 2017], the senior Department of Defense official with responsibility for developmental testing shall develop guidance for the sufficiency assessments required by section 2366b(c)(1) and section 2366c(a)(4) of title 10, United States Code [now 10 U.S.C. 4252(c)(1) and 4253(a)(4)], as added by paragraphs (1) and (2). At a minimum, the guidance shall require—

“(A) for the sufficiency assessment required by section 2366b(c)(1) of such title [now 10 U.S.C. 4252(c)(1)], that the assessment address the sufficiency of—

“(i) the developmental test and evaluation plan;

“(ii) the developmental test and evaluation schedule, including a comparison to historic analogous systems;

“(iii) the developmental test and evaluation resources (facilities, personnel, test assets, data analytics tools, and modeling and simulation capabilities);

“(iv) the risks of developmental test and production concurrency; and

“(v) the developmental test criteria for entering the production phase; and

“(B) for the sufficiency assessment required by section 2366c(a)(4) of such title [now 10 U.S.C. 4253(a)(4)], that the assessment address—

“(i) the sufficiency of the developmental test and evaluation completed;

“(ii) the sufficiency of the plans and resources available for remaining developmental test and evaluation;

“(iii) the risks identified during developmental testing to the production and deployment phase;

“(iv) the sufficiency of the plans and resources for remaining developmental test and evaluation; and

“(v) the readiness of the system to perform scheduled initial operational test and evaluation.”

MILESTONE B DECISIONS

Pub. L. 114-92, div. A, title VIII, §802(d)(3), Nov. 25, 2015, 129 Stat. 880, provided that: “The Chief of the Armed Force concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief’s views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in section 2366b(b)(3) of title 10, United States Code [now 10 U.S.C. 4252(b)(3)], as amended by section 824 of this Act, prior to a Milestone B decision on the program.”

FORMAL REVIEW PROCESS FOR BANDWIDTH REQUIREMENTS

Pub. L. 110-417, [div. A], title X, §1047(d), Oct. 14, 2008, 122 Stat. 4603, as amended by Pub. L. 111-84, div. A, title X, §1033, Oct. 28, 2009, 123 Stat. 2449; Pub. L. 115-232, div. A, title VIII, §813(c), Aug. 13, 2018, 132 Stat. 1851, provided that: “The Secretary of Defense and the Director of National Intelligence shall, as part of the Milestone B or Key Decision Point B approval process for any major defense acquisition program or major system acquisition program, establish a formal review process to ensure that—

“(A) the bandwidth requirements needed to support such program are or will be met; and

“(B) a determination will be made with respect to how to meet the bandwidth requirements for such program.”

§ 4253. Major defense acquisition programs: submissions to Congress on Milestone C

(a) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone C approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following:

(1) The estimated cost and schedule for the program established by the military department concerned, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(2) The independent estimated cost for the program established pursuant to section 3221(b)(6) of this title, and any independent estimated schedule for the program, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(3) A summary of any production, manufacturing, and fielding risks associated with the program.

(4) An assessment of the sufficiency of the developmental test and evaluation completed, including the use of automated data analytics or modeling and simulation tools and methodologies.

(b) ADDITIONAL INFORMATION.—At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee further information or underlying documentation for the information in a brief summary report submitted under subsection (a), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that subsection.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” has the meaning given that term in section 437(c) of this title. (Added Pub. L. 114-328, div. A, title VIII, §808(c)(1), Dec. 23, 2016, 130 Stat. 2265, §2366c; amended Pub. L. 115-91, div. A, title VIII, §838(a)(2), Dec. 12, 2017, 131 Stat. 1474; renumbered §4253 and amended Pub. L. 116-283, div. A, title XVIII, §1847(d)(3), Jan. 1, 2021, 134 Stat. 4256.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2366c of this title as this section and, in subsec. (a)(2), substituted “section 3221(b)(6)” for “section 2334(a)(6)” in introductory provisions. Section was inserted after section 4252 of this title, as renumbered by par. (2) of section 1847(d) of Pub. L. 116-283, to reflect the probable intent of Congress, notwithstanding language directing this section be inserted after section 4252 of this title “as transferred and redesignated by paragraph (3)” of section 1847(d).

2017—Subsec. (a)(4). Pub. L. 115-91 added par. (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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.

RESPONSIBILITY FOR CONDUCTING ASSESSMENTS; GUIDANCE

For provisions designating officials responsible for conducting assessments and provisions requiring guid-