

Union Calendar No. 25

115TH CONGRESS
1ST SESSION

H. R. 1294

[Report No. 115–45]

To amend the Homeland Security Act of 2002 to provide for congressional notification regarding major acquisition program breaches, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2017

Mr. RUTHERFORD (for himself and Mr. McCAUL) introduced the following bill; which was referred to the Committee on Homeland Security

MARCH 20, 2017

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend the Homeland Security Act of 2002 to provide for congressional notification regarding major acquisition program breaches, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reducing DHS Acqui-
 5 sition Cost Growth Act”.

6 **SEC. 2. CONGRESSIONAL NOTIFICATION FOR MAJOR AC-**
 7 **QUISITION PROGRAMS.**

8 (a) IN GENERAL.—Subtitle D of title VIII of the
 9 Homeland Security Act of 2002 (6 U.S.C. 391 et seq.)
 10 is further amended by adding at the end the following new
 11 section:

12 **“SEC. 836. CONGRESSIONAL NOTIFICATION AND OTHER RE-**
 13 **QUIREMENTS FOR MAJOR ACQUISITION PRO-**
 14 **GRAM BREACH.**

15 “(a) REQUIREMENTS WITHIN DEPARTMENT IN
 16 EVENT OF BREACH.—

17 “(1) NOTIFICATIONS.—

18 “(A) NOTIFICATION OF BREACH.—If a
 19 breach occurs in a major acquisition program,
 20 the program manager for such program shall
 21 notify the Component Acquisition Executive for
 22 such program, the head of the component con-
 23 cerned, the Executive Director of the Program
 24 Accountability and Risk Management division,
 25 the Under Secretary for Management, and the

1 Deputy Secretary not later than 30 calendar
2 days after such breach is identified.

3 “(B) NOTIFICATION TO SECRETARY.—If a
4 breach occurs in a major acquisition program
5 and such breach results in a cost overrun great-
6 er than 15 percent, a schedule delay greater
7 than 180 days, or a failure to meet any of the
8 performance thresholds from the cost, schedule,
9 or performance parameters specified in the
10 most recently approved acquisition program
11 baseline for such program, the Component Ac-
12 quisition Executive for such program shall no-
13 tify the Secretary and the Inspector General of
14 the Department not later than five business
15 days after the Component Acquisition Executive
16 for such program, the head of the component
17 concerned, the Executive Director of the Pro-
18 gram Accountability and Risk Management Di-
19 vision, the Under Secretary for Management,
20 and the Deputy Secretary are notified of the
21 breach pursuant to subparagraph (A).

22 “(2) REMEDIATION PLAN AND ROOT CAUSE
23 ANALYSIS.—

24 “(A) IN GENERAL.—If a breach occurs in
25 a major acquisition program, the program man-

1 ager for such program shall submit to the head
2 of the component concerned, the Executive Di-
3 rector of the Program Accountability and Risk
4 Management division, and the Under Secretary
5 for Management in writing a remediation plan
6 and root cause analysis relating to such breach
7 and program. Such plan and analysis shall be
8 submitted at a date established at the discretion
9 of the Under Secretary for Management.

10 “(B) REMEDIATION PLAN.—The remedi-
11 ation plan required under this subparagraph
12 (A) shall—

13 “(i) explain the circumstances of the
14 breach at issue;

15 “(ii) provide prior cost estimating in-
16 formation;

17 “(iii) include a root cause analysis
18 that determines the underlying cause or
19 causes of shortcomings in cost, schedule,
20 or performance of the major acquisition
21 program with respect to which such breach
22 has occurred, including the role, if any,
23 of—

24 “(I) unrealistic performance ex-
25 pectations;

1 “(II) unrealistic baseline esti-
2 mates for cost or schedule or changes
3 in program requirements;

4 “(III) immature technologies or
5 excessive manufacturing or integra-
6 tion risk;

7 “(IV) unanticipated design, engi-
8 neering, manufacturing, or technology
9 integration issues arising during pro-
10 gram performance;

11 “(V) changes to the scope of such
12 program;

13 “(VI) inadequate program fund-
14 ing or changes in planned out-year
15 funding from one 5-year funding plan
16 to the next 5-year funding plan as
17 outlined in the Future Years Home-
18 land Security Program required under
19 section 874;

20 “(VII) legislative, legal, or regu-
21 latory changes; or

22 “(VIII) inadequate program
23 management personnel, including lack
24 of sufficient number of staff, training,

1 credentials, certifications, or use of
2 best practices;

3 “(iv) propose corrective action to ad-
4 dress cost growth, schedule delays, or per-
5 formance issues;

6 “(v) explain the rationale for why a
7 proposed corrective action is recommended;
8 and

9 “(vi) in coordination with the Compo-
10 nent Acquisition Executive for such pro-
11 gram, discuss all options considered, in-
12 cluding the estimated impact on cost,
13 schedule, or performance of such program
14 if no changes are made to current require-
15 ments, the estimated cost of such program
16 if requirements are modified, and the ex-
17 tent to which funding from other programs
18 will need to be reduced to cover the cost
19 growth of such program.

20 “(3) REVIEW OF CORRECTIVE ACTIONS.—

21 “(A) IN GENERAL.—The Under Secretary
22 for Management shall review the remediation
23 plan required under paragraph (2). The Under
24 Secretary may approve such plan or provide an
25 alternative proposed corrective action within 30

1 days of the submission of such plan under such
2 paragraph.

3 “(B) SUBMISSION TO CONGRESS.—Not
4 later than 30 days after the review required
5 under subparagraph (A) is completed, the
6 Under Secretary for Management shall submit
7 to the congressional homeland security commit-
8 tees the following:

9 “(i) A copy of the remediation plan
10 and the root cause analysis required under
11 paragraph (2).

12 “(ii) A statement describing the cor-
13 rective action or actions that have occurred
14 pursuant to paragraph (2)(b)(iv) for the
15 major acquisition program at issue, with a
16 justification for such action or actions.

17 “(b) REQUIREMENTS RELATING TO CONGRESSIONAL
18 NOTIFICATION IF BREACH OCCURS.—

19 “(1) NOTIFICATION TO CONGRESS.—If a notifi-
20 cation to the Secretary is made under subsection
21 (a)(1)(B) relating to a breach in a major acquisition
22 program, the Under Secretary for Management shall
23 notify the congressional homeland security commit-
24 tees of such breach in the next quarterly Com-
25 prehensive Acquisition Status Report, as required by

1 title I of division D of the Consolidated Appropria-
2 tions Act, 2016, (Public Law 114–113) following re-
3 ceipt by the Under Secretary of notification under
4 such subsection.

5 “(2) SIGNIFICANT VARIANCES IN COSTS OR
6 SCHEDULE.—If a likely cost overrun is greater than
7 20 percent or a likely delay is greater than 12
8 months from the costs and schedule specified in the
9 acquisition program baseline for a major acquisition
10 program, the Under Secretary for Management shall
11 include in the notification required in paragraph (1)
12 a written certification, with supporting explanation,
13 that—

14 “(A) such program is essential to the ac-
15 complishment of the Department’s mission;

16 “(B) there are no alternatives to the capa-
17 bility or asset provided by such program that
18 will provide equal or greater capability in both
19 a more cost-effective and timely manner;

20 “(C) the new acquisition schedule and esti-
21 mates for total acquisition cost are reasonable;
22 and

23 “(D) the management structure for such
24 program is adequate to manage and control
25 cost, schedule, and performance.

1 “(c) DEFINITIONS.—In this section:

2 “(1) ACQUISITION.—The term ‘acquisition’ has
3 the meaning given such term in section 131 of title
4 41, United States Code.

5 “(2) ACQUISITION PROGRAM.—The term ‘acqui-
6 sition program’ means the process by which the De-
7 partment acquires, with any appropriated amounts,
8 by contract for purchase or lease, property or serv-
9 ices (including construction) that support the mis-
10 sions and goals of the Department.

11 “(3) ACQUISITION PROGRAM BASELINE.—The
12 term ‘acquisition program baseline’, with respect to
13 an acquisition program, means a summary of the
14 cost, schedule, and performance parameters, ex-
15 pressed in standard, measurable, quantitative terms,
16 which must be met in order to accomplish the goals
17 of such program.

18 “(4) BEST PRACTICES.—The term ‘best prac-
19 tices’, with respect to acquisition, means a knowl-
20 edge-based approach to capability development that
21 includes—

22 “(A) identifying and validating needs;

23 “(B) assessing alternatives to select the
24 most appropriate solution;

1 “(C) clearly establishing well-defined re-
2 quirements;

3 “(D) developing realistic cost assessments
4 and schedules;

5 “(E) securing stable funding that matches
6 resources to requirements;

7 “(F) demonstrating technology, design,
8 and manufacturing maturity;

9 “(G) using milestones and exit criteria or
10 specific accomplishments that demonstrate
11 progress;

12 “(H) adopting and executing standardized
13 processes with known success across programs;

14 “(I) establishing an adequate workforce
15 that is qualified and sufficient to perform nec-
16 essary functions; and

17 “(J) integrating the capabilities described
18 in subparagraphs (A) through (I) into the De-
19 partment’s mission and business operations.

20 “(5) BREACH.—The term ‘breach’, with respect
21 to a major acquisition program, means a failure to
22 meet any cost, schedule, or performance threshold
23 specified in the most recently approved acquisition
24 program baseline.

1 “(6) CONGRESSIONAL HOMELAND SECURITY
2 COMMITTEES.—The term ‘congressional homeland
3 security committees’ means—

4 “(A) the Committee on Homeland Security
5 of the House of Representatives and the Com-
6 mittee on Homeland Security and Govern-
7 mental Affairs of the Senate; and

8 “(B) the Committee on Appropriations of
9 the House of Representatives and of the Sen-
10 ate.

11 “(7) COMPONENT ACQUISITION EXECUTIVE.—
12 The term ‘Component Acquisition Executive’ means
13 the senior acquisition official within a component
14 who is designated in writing by the Under Secretary
15 for Management, in consultation with the component
16 head, with authority and responsibility for leading a
17 process and staff to provide acquisition and program
18 management oversight, policy, and guidance to en-
19 sure that statutory, regulatory, and higher level pol-
20 icy requirements are fulfilled, including compliance
21 with Federal law, the Federal Acquisition Regula-
22 tion, and Department acquisition management direc-
23 tives established by the Under Secretary for Man-
24 agement.

1 “(8) MAJOR ACQUISITION PROGRAM.—The term
2 ‘major acquisition program’ means a Department
3 acquisition program that is estimated by the Sec-
4 retary to require an eventual total expenditure of at
5 least \$300,000,000 (based on fiscal year 2017 con-
6 stant dollars) over its life cycle cost.”.

7 (b) CLERICAL AMENDMENT.—The table of contents
8 in section 1(b) of the Homeland Security Act of 2002 is
9 amended by inserting after the item relating to section
10 835 the following new item:

 “Sec. 836. Congressional notification and other requirements for major acqui-
 sition program breach.”.

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