

“(a) REQUIREMENT.—The Secretary of Defense shall provide for the commencement, not later than October 1, 1994, of the operation of Stars and Stripes bookstores outside of the United States by the military exchanges.

“(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out subsection (a).”

#### CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.	
2430.	Major defense acquisition program defined.
2431.	Weapons development and procurement schedules.
2432.	Selected Acquisition Reports.
2433.	Unit cost reports.
2434.	Independent cost estimates; operational manpower requirements.
2435.	Baseline description.
2436.	Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States.
2437.	Development of major defense acquisition programs: sustainment of system to be replaced.
[2438, 2439. Repealed.]	
2440.	Technology and industrial base plans.

##### AMENDMENTS

2004—Pub. L. 108–375, div. A, title VIII, §805(a)(2), Oct. 28, 2004, 118 Stat. 2009, added item 2437.

2003—Pub. L. 108–136, div. A, title VIII, §822(a)(2), Nov. 24, 2003, 117 Stat. 1547, added item 2436.

1994—Pub. L. 103–355, title III, §§3005(b), 3006(b), 3007(b), Oct. 13, 1994, 108 Stat. 3331, substituted “Baseline description” for “Enhanced program stability” in item 2435 and struck out items 2438 “Major programs: competitive phototyping” and 2439 “Major programs: competitive alternative sources”.

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(4), Nov. 30, 1993, 107 Stat. 1713, struck out items 2436 “Defense enterprise programs” and 2437 “Defense enterprise programs: milestone authorization”.

1992—Pub. L. 102–484, div. A, title VIII, §821(a)(2), div. D, title XLII, §4216(b)(2), Oct. 23, 1992, 106 Stat. 2460, 2670, added items 2438 and 2440 and redesignated former item 2438 as 2439.

1987—Pub. L. 100–26, §7(b)(1), (2)(B), (9)(B), Apr. 21, 1987, 100 Stat. 279, 280, substituted “Major Defense Acquisition Programs” for “Oversight of Cost Growth in Major Programs” in chapter heading, added item 2430, and transferred former item 2305a from chapter 137 and redesignated it as item 2438.

1986—Pub. L. 99–661, div. A, title XII, §1208(c)(2), Nov. 14, 1986, 100 Stat. 3976, inserted “; operational manpower requirements” in item 2434.

Pub. L. 99–500, §101(c) [title X, §§904(a)(2), 905(a)(2), 906(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, 1783–135, 1783–137, and Pub. L. 99–591, §101(c) [title X, §§904(a)(2), 905(a)(2), 906(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134, 3341–135, 3341–137; Pub. L. 99–661, div. A, title IX, formerly title IV, §§904(a)(2), 905(a)(2), 906(a)(2), Nov. 14, 1986, 100 Stat. 3914–3916, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, added items 2435 to 2437.

Pub. L. 99–433, title I, §101(a)(4), Oct. 1, 1986, 100 Stat. 994, added chapter heading and analysis of sections for chapter 144, consisting of sections 2431 to 2434.

#### § 2430. Major defense acquisition program defined

(a) In this chapter, the term “major defense acquisition program” means a Department of Defense acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and—

(1) that is designated by the Secretary of Defense as a major defense acquisition program; or

(2) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than \$300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement of more than \$1,800,000,000 (based on fiscal year 1990 constant dollars).

(b) The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in subsection (a)(2) on the basis of Department of Defense escalation rates. An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 100–26, §7(b)(2)(A), Apr. 21, 1987, 101 Stat. 279; amended Pub. L. 102–484, div. A, title VIII, §817(b), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

##### AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (b). Pub. L. 104–106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

1992—Pub. L. 102–484 designated existing provisions as subsec. (a), in par. (2) substituted “\$300,000,000” for “\$200,000,000”, “1990” for “1980” in two places, and “\$1,800,000,000” for “\$1,000,000,000”, and added subsec. (b).

##### REQUIREMENTS MANAGEMENT CERTIFICATION TRAINING PROGRAM

Pub. L. 109–364, div. A, title VIII, §801, Oct. 17, 2006, 120 Stat. 2312, provided that:

“(a) TRAINING PROGRAM.—

“(1) REQUIREMENT.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, in consultation with the Defense Acquisition University, shall develop a training program to certify military and civilian personnel of the Department of Defense with responsibility for generating requirements for major defense acquisition programs (as defined in section 2430(a) of title 10, United States Code).

“(2) COMPETENCY AND OTHER REQUIREMENTS.—The Under Secretary shall establish competency requirements for the personnel undergoing the training program. The Under Secretary shall define the target population for such training program by identifying which military and civilian personnel should have responsibility for generating requirements. The Under Secretary also may establish other training programs for personnel not subject to chapter 87 of title 10, United States Code, who contribute significantly to other types of acquisitions by the Department of Defense.

“(b) APPLICABILITY.—Effective on and after September 30, 2008, a member of the Armed Forces or an employee of the Department of Defense with authority to generate requirements for a major defense acquisition program may not continue to participate in the requirements generation process unless the member or employee successfully completes the certification training program developed under this section.

“(c) REPORTS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an interim report, not

later than March 1, 2007, and a final report, not later than March 1, 2008, on the implementation of the training program required under this section.”

PROGRAM MANAGER EMPOWERMENT AND  
ACCOUNTABILITY

Pub. L. 109-364, div. A, title VIII, § 853, Oct. 17, 2006, 120 Stat. 2342, provided that:

“(a) STRATEGY.—The Secretary of Defense shall develop a comprehensive strategy for enhancing the role of Department of Defense program managers in developing and carrying out defense acquisition programs.

“(b) MATTERS TO BE ADDRESSED.—The strategy required by this section shall address, at a minimum—

“(1) enhanced training and educational opportunities for program managers;

“(2) increased emphasis on the mentoring of current and future program managers by experienced senior executives and program managers within the Department;

“(3) improved career paths and career opportunities for program managers;

“(4) additional incentives for the recruitment and retention of highly qualified individuals to serve as program managers;

“(5) improved resources and support (including systems engineering expertise, cost estimating expertise, and software development expertise) for program managers;

“(6) improved means of collecting and disseminating best practices and lessons learned to enhance program management throughout the Department;

“(7) common templates and tools to support improved data gathering and analysis for program management and oversight purposes;

“(8) increased accountability of program managers for the results of defense acquisition programs; and

“(9) enhanced monetary and nonmonetary awards for successful accomplishment of program objectives by program managers.

“(c) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM MANAGERS BEFORE MILESTONE B.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall revise Department of Defense guidance for major defense acquisition programs to address the qualifications, resources, responsibilities, tenure, and accountability of program managers for the program development period (before Milestone B approval (or Key Decision Point B approval in the case of a space program)).

“(d) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM MANAGERS AFTER MILESTONE B.—Not later than 180 days after the date of enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall revise Department of Defense guidance for major defense acquisition programs to address the qualifications, resources, responsibilities, tenure and accountability of program managers for the program execution period (from Milestone B approval (or Key Decision Point B approval in the case of a space program) until the delivery of the first production units of a program). The guidance issued pursuant to this subsection shall address, at a minimum—

“(1) the need for a performance agreement between a program manager and the milestone decision authority for the program, setting forth expected parameters for cost, schedule, and performance, and appropriate commitments by the program manager and the milestone decision authority to ensure that such parameters are met;

“(2) authorities available to the program manager, including, to the extent appropriate, the authority to object to the addition of new program requirements that would be inconsistent with the parameters established at Milestone B (or Key Decision Point B in the case of a space program) and reflected in the performance agreement; and

“(3) the extent to which a program manager for such period should continue in the position without interruption until the delivery of the first production units of the program.

“(e) REPORTS.—

“(1) REPORT BY SECRETARY OF DEFENSE.—Not later than 270 days after the date of enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the strategy developed pursuant to subsection (a) and the guidance issued pursuant to subsections (b) and (c).

“(2) REPORT BY COMPTROLLER GENERAL.—Not later than one year after the date of enactment of this Act, the Comptroller General shall submit to the congressional defense committees a report on the actions taken by the Secretary of Defense to implement the requirements of this section.”

MANAGEMENT OF NATIONAL SECURITY AGENCY  
MODERNIZATION PROGRAM

Pub. L. 108-136, div. A, title IX, § 924, Nov. 24, 2003, 117 Stat. 1576, provided that:

“(a) MANAGEMENT OF ACQUISITION PROGRAMS THROUGH USD (AT&L).—The Secretary of Defense shall direct that, effective as of the date of the enactment of this Act [Nov. 24, 2003], acquisitions under the National Security Agency Modernization Program shall be directed and managed by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(b) APPLICABILITY OF MAJOR DEFENSE ACQUISITION PROGRAM AUTHORITIES.—(1) Each project designated as a major defense acquisition program under paragraph (2) shall be managed under the laws, policies, and procedures that are applicable to major defense acquisition programs (as defined in section 2430 of title 10, United States Code).

“(2) The Secretary of Defense (acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics) shall designate those projects under the National Security Agency Modernization Program that are to be managed as major defense acquisition programs.

“(c) MILESTONE DECISION AUTHORITY.—(1) The authority to make a decision that a program is authorized to proceed from one milestone stage into another (referred to as the milestone decision authority) may only be exercised by the Under Secretary of Defense for Acquisition, Technology, and Logistics for the following:

“(A) Each project of the National Security Agency Modernization Program that is to be managed as a major defense acquisition program, as designated under subsection (b).

“(B) Each major system under the National Security Agency Modernization Program.

“(2) The limitation in paragraph (1) shall terminate on, and the Under Secretary may delegate the milestone decision authority referred to in paragraph (1) to the Director of the National Security Agency at any time after, the date that is the later of—

“(A) September 30, 2005, or

“(B) the date on which the Under Secretary submits to the appropriate committees of Congress a notification described in paragraph (3).

“(3) A notification described in this paragraph is a notification by the Under Secretary of the Under Secretary's intention to delegate the milestone decision authority referred to in paragraph (1) to the Director of the National Security Agency, together with a detailed discussion of the justification for that delegation. Such a notification may not be submitted until—

“(A) the Under Secretary has determined (after consultation with the Under Secretary of Defense for Intelligence and the Deputy Director of Central Intelligence for Community Management) that the Director has implemented acquisition management policies, procedures, and practices that are sufficient to ensure that acquisitions by the National Security Agency are conducted in a manner consistent with sound, efficient acquisition practices;

“(B) the Under Secretary has consulted with the Under Secretary of Defense for Intelligence and the Deputy Director of Central Intelligence for Commu-

nity Management on the delegation of such milestone decision authority to the Director; and

“(C) the Secretary of Defense has approved the delegation of such milestone decision authority to the Director.

“(d) PROJECTS COMPRISING PROGRAM.—The National Security Agency Modernization Program consists of the following projects of the National Security Agency:

“(1) The Trailblazer project.

“(2) The Groundbreaker project.

“(3) Each cryptological mission management project.

“(4) Each other project of that Agency that—

“(A) meets either of the dollar thresholds in effect under paragraph (2) of section 2430(a) of title 10, United States Code; and

“(B) is determined by the Under Secretary of Defense for Acquisition, Technology, and Logistics as being a major project that is within, or properly should be within, the National Security Agency Modernization Project.

“(e) DEFINITIONS.—In this section:

“(1) MAJOR SYSTEM.—The term ‘major system’ has the meaning given that term in section 2302(5) of title 10, United States Code.

“(2) APPROPRIATE COMMITTEES OF CONGRESS.—The term ‘appropriate committees of Congress’ means the following:

“(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

“(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.”

#### SPIRAL DEVELOPMENT UNDER MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 107-314, div. A, title VIII, §803, Dec. 2, 2002, 116 Stat. 2603, provided that:

“(a) AUTHORITY.—The Secretary of Defense is authorized to conduct major defense acquisition programs as spiral development programs.

“(b) LIMITATION ON SPIRAL DEVELOPMENT PROGRAMS.—A research and development program for a major defense acquisition program of a military department or Defense Agency may not be conducted as a spiral development program unless the Secretary of Defense approves the spiral development plan for that research and development program in accordance with subsection (c). The Secretary of Defense may delegate authority to approve the plan to the Under Secretary of Defense for Acquisition, Technology, and Logistics, or to the senior acquisition executive of the military department or Defense Agency concerned, but such authority may not be further delegated.

“(c) SPIRAL DEVELOPMENT PLANS.—A spiral development plan for a research and development program for a major defense acquisition program shall, at a minimum, include the following matters:

“(1) A rationale for dividing the research and development program into separate spirals, together with a preliminary identification of the spirals to be included.

“(2) A program strategy, including overall cost, schedule, and performance goals for the total research and development program.

“(3) Specific cost, schedule, and performance parameters, including measurable exit criteria, for the first spiral to be conducted.

“(4) A testing plan to ensure that performance goals, parameters, and exit criteria are met.

“(5) An appropriate limitation on the number of prototype units that may be produced under the research and development program.

“(6) Specific performance parameters, including measurable exit criteria, that must be met before the major defense acquisition program proceeds into production of units in excess of the limitation on the number of prototype units.

“(d) GUIDANCE.—Not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002], the Sec-

retary of Defense shall issue guidance for the implementation of spiral development programs authorized by this section. The guidance shall include appropriate processes for ensuring the independent validation of exit criteria being met, the operational assessment of fieldable prototypes, and the management of spiral development programs.

“(e) REPORTING REQUIREMENT.—The Secretary shall submit to Congress by September 30 of each of 2003 through 2008 a status report on each research and development program that is a spiral development program. The report shall contain information on unit costs that is similar to the information on unit costs under major defense acquisition programs that is required to be provided to Congress under chapter 144 of title 10, United States Code, except that the information on unit costs shall address projected prototype costs instead of production costs.

“(f) APPLICABILITY OF EXISTING LAW.—Nothing in this section shall be construed to exempt any program of the Department of Defense from the application of any provision of chapter 144 of title 10, United States Code, section 139, 181, 2366, 2399, or 2400 of such title, or any requirement under Department of Defense Directive 5000.1, Department of Defense Instruction 5000.2, or Chairman of the Joint Chiefs of Staff Instruction 3170.01B in accordance with the terms of such provision or requirement.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘spiral development program’, with respect to a research and development program, means a program that—

“(A) is conducted in discrete phases or blocks, each of which will result in the development of fieldable prototypes; and

“(B) will not proceed into acquisition until specific performance parameters, including measurable exit criteria, have been met.

“(2) The term ‘spiral’ means one of the discrete phases or blocks of a spiral development program.

“(3) The term ‘major defense acquisition program’ has the meaning given such term in section 139(a)(2)(B) of title 10, United States Code.”

#### ENVIRONMENTAL CONSEQUENCE ANALYSIS OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 103-337, div. A, title VIII, §815, Oct. 5, 1994, 108 Stat. 2819, provided that:

“(a) GUIDANCE.—Before April 1, 1995, the Secretary of Defense shall issue guidance, to apply uniformly throughout the Department of Defense, regarding—

“(1) how to achieve the purposes and intent of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by ensuring timely compliance for major defense acquisition programs (as defined in section 2430 of title 10, United States Code) through (A) initiation of compliance efforts before development begins, (B) appropriate environmental impact analysis in support of each milestone decision, and (C) accounting for all direct, indirect, and cumulative environmental effects before proceeding toward production; and

“(2) how to analyze, as early in the process as feasible, the life-cycle environmental costs for such major defense acquisition programs, including the materials to be used, the mode of operations and maintenance, requirements for demilitarization, and methods of disposal, after consideration of all pollution prevention opportunities and in light of all environmental mitigation measures to which the department expressly commits.

“(b) ANALYSIS.—Beginning not later than March 31, 1995, the Secretary of Defense shall analyze the environmental costs of a major defense acquisition process as an integral part of the life-cycle cost analysis of the program pursuant to the guidance issued under subsection (a).

“(c) DATA BASE FOR NEPA DOCUMENTATION.—The Secretary of Defense shall establish and maintain a data base for documents prepared by the Department of De-

fense in complying with the National Environmental Policy Act of 1969 with respect to major defense acquisition programs. Any such document relating to a major defense acquisition program shall be maintained in the data base for 5 years after commencement of low-rate initial production of the program.”

#### EFFICIENT CONTRACTING PROCESSES

Pub. L. 103-160, div. A, title VIII, §837, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103-355, title V, §5064(b)(2), Oct. 13, 1994, 108 Stat. 3360, provided that: “The Secretary of Defense shall take any additional actions that the Secretary considers necessary to waive regulations not required by statute that affect the efficiency of the contracting process within the Department of Defense. Such actions shall include, in the Secretary’s discretion, developing methods to streamline the procurement process, streamlining the period for entering into contracts, and defining alternative techniques to reduce reliance on military specifications and standards, in contracts for the defense acquisition programs participating in the Defense Acquisition Pilot Program.”

#### CONTRACT ADMINISTRATION: PERFORMANCE BASED CONTRACT MANAGEMENT

Pub. L. 103-160, div. A, title VIII, §838, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103-355, title V, §5064(b)(3), Oct. 13, 1994, 108 Stat. 3360, provided that: “For at least one participating defense acquisition program for which a determination is made to make payments for work in progress under the authority of section 2307 of title 10, United States Code, the Secretary of Defense should define payment milestones on the basis of quantitative measures of results.”

#### DEFENSE ACQUISITION PILOT PROGRAM

Pub. L. 104-201, div. A, title VIII, §803, Sept. 23, 1996, 110 Stat. 2604, as amended by Pub. L. 105-85, div. A, title VIII, §847(b)(2), Nov. 18, 1997, 111 Stat. 1845, provided that:

“(a) AUTHORITY.—The Secretary of Defense may waive sections 2399, 2432, and 2433 of title 10, United States Code, in accordance with this section for any defense acquisition program designated by the Secretary of Defense for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2430 note).

“(b) OPERATIONAL TEST AND EVALUATION.—The Secretary of Defense may waive the requirements for operational test and evaluation for such a defense acquisition program as set forth in section 2399 of title 10, United States Code, if the Secretary—

“(1) determines (without delegation) that such test would be unreasonably expensive or impractical;

“(2) develops a suitable alternate operational test program for the system concerned;

“(3) describes in the test and evaluation master plan, as approved by the Director of Operational Test and Evaluation, the method of evaluation that will be used to evaluate whether the system will be effective and suitable for combat; and

“(4) submits to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and House of Representatives] a report containing the determination that was made under paragraph (1), a justification for that determination, and a copy of the plan required by paragraph (3).

“(c) SELECTED ACQUISITION REPORTS.—The Secretary of Defense may waive the requirements of sections 2432 and 2433 of title 10, United States Code, for such a defense acquisition program if the Secretary provides a single annual report to Congress at the end of each fiscal year that describes the status of the program in relation to the baseline description for the program established under section 2435 of such title.”

Pub. L. 103-355, title V, §5064, Oct. 13, 1994, 108 Stat. 3359, as amended by Pub. L. 106-398, §1 [div. A], title

VIII, §801(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-202, 1654A-203, provided that:

“(a) IN GENERAL.—The Secretary of Defense is authorized to designate the following defense acquisition programs for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101-510] (10 U.S.C. 2430 note):

“(1) FIRE SUPPORT COMBINED ARMS TACTICAL TRAINER (FSCATT).—The Fire Support Combined Arms Tactical Trainer program with respect to all contracts directly related to the procurement of a training simulation system (including related hardware, software, and subsystems) to perform collective training of field artillery gunnery team components, with development of software as required to generate the training exercises and component interfaces.

“(2) JOINT DIRECT ATTACK MUNITION (JDAM I).—The Joint Direct Attack Munition program with respect to all contracts directly related to the development and procurement of a strap-on guidance kit, using an inertially guided, Global Positioning System updated guidance kit to enhance the delivery accuracy of 500-pound, 1000-pound, and 2000-pound bombs in inventory.

“(3) JOINT PRIMARY AIRCRAFT TRAINING SYSTEM (JPATS).—The Joint Primary Aircraft Training System (JPATS) with respect to all contracts directly related to the acquisition of a new primary trainer aircraft to fulfill Air Force and Navy joint undergraduate aviation training requirements, and an associated ground-based training system consisting of air crew training devices (simulators), courseware, a Training Management System, and contractor support for the life of the system.

“(4) COMMERCIAL-DERIVATIVE AIRCRAFT (CDA).—

“(A) All contracts directly related to the acquisition or upgrading of commercial-derivative aircraft for use in meeting airlift and tanker requirements and the air vehicle component for airborne warning and control systems.

“(B) For purposes of this paragraph, the term ‘commercial-derivative aircraft’ means any of the following:

“(i) Any aircraft (including spare parts, support services, support equipment, technical manuals, and data related thereto) that is or was of a type customarily used in the course of normal business operations for other than Federal Government purposes, that has been issued a type certificate by the Administrator of the Federal Aviation Administration, and that has been sold or leased for use in the commercial marketplace or that has been offered for sale or lease for use in the commercial marketplace.

“(ii) Any aircraft that, but for modifications of a type customarily available in the commercial marketplace, or minor modifications made to meet Federal Government requirements, would satisfy or would have satisfied the criteria in subclause (i).

“(iii) For purposes of a potential complement or alternative to the C-17 program, any nondevelopmental airlift aircraft, other than the C-17 or any aircraft derived from the C-17, shall be considered a commercial-derivative aircraft.

“(5) COMMERCIAL-DERIVATIVE ENGINE (CDE).—The commercial derivative engine program with respect to all contracts directly related to the acquisition of (A) commercial derivative engines (including spare engines and upgrades), logistics support equipment, technical orders, management data, and spare parts, and (B) commercially derived engines for use in supporting the purchase of commercial-derivative aircraft for use in airlift and tanker requirements (including engine replacement and upgrades) and the air vehicle component for airborne warning and control systems. For purposes of a potential complement or alternative to the C-17 program, any nondevelopmental airlift aircraft engine shall be considered a commercial-derivative engine.

“(b) PILOT PROGRAM IMPLEMENTATION.—(1) [Amended section 833 of Pub. L. 103-160, set out below.]

“(2) [Amended section 837 of Pub. L. 103-160, set out above.]

“(3) [Amended section 838 of Pub. L. 103-160, set out above.]

“(4) Not later than 45 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 [Oct. 13, 1994], the Secretary of Defense shall identify for each defense acquisition program participating in the pilot program quantitative measures and goals for reducing acquisition management costs.

“(5) For each defense acquisition program participating in the pilot program, the Secretary of Defense shall establish a review process that provides senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program and that—

“(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

“(B) reduce data requirements from the current program review reporting requirements.

“(c) SPECIAL AUTHORITY.—The authority delegated under subsection (a) may include authority for the Secretary of Defense—

“(1) to apply any amendment or repeal of a provision of law made in this Act [see Tables for classification] to the pilot programs before the effective date of such amendment or repeal [see Effective Date of 1994 Amendment note set out under section 251 of Title 41, Public Contracts]; and

“(2) to apply to a procurement of items other than commercial items under such programs—

“(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

“(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

“(d) APPLICABILITY.—(1) Subsection (c) applies with respect to—

“(A) a contract that is awarded or modified during the period described in paragraph (2); and

“(B) a contract that is awarded before the beginning of such period and is to be performed (or may be performed), in whole or in part, during such period.

“(2) The period referred to in paragraph (1) is the period that begins on October 13, 1994, and ends on October 1, 2007.

“(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the programs designated for participation in the defense acquisition pilot program under the authority of subsection (a).”

Pub. L. 103-337, div. A, title VIII, §819, Oct. 5, 1994, 108 Stat. 2822, provided that: “The Secretary of Defense is authorized to designate the following defense acquisition programs for participation, to the extent provided in the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, see Tables for classification], in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101-510] (10 U.S.C. 2430 note):

“(1) The Fire Support Combined Arms Tactical Trainer program.

“(2) The Joint Direct Attack Munition program.

“(3) The Joint Primary Aircraft Training System.

“(4) Commercial-derivative aircraft.

“(5) Commercial-derivative engine.”

Pub. L. 103-160, div. A, title VIII, §833, Nov. 30, 1993, 107 Stat. 1716, as amended by Pub. L. 103-355, title V, §5064(b)(1), Oct. 13, 1994, 108 Stat. 3360, provided that:

“(a) MISSION-ORIENTED PROGRAM MANAGEMENT.—In the exercise of the authority provided in section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101-510] (10 U.S.C. 2430 note), the Secretary of Defense should propose for one or more of the defense acquisition programs covered by the Defense Acquisition Pilot Program to utilize the concept of mission-oriented program management.

“(b) POLICIES AND PROCEDURES.—In the case of each defense acquisition program covered by the Defense Acquisition Pilot Program, the Secretary of Defense should prescribe policies and procedures for the interaction of the program manager and the commander of the operational command (or a representative) responsible for the requirement for the equipment acquired, and for the interaction with the commanders of the unified and specified combatant commands. Such policies and procedures should include provisions for enabling the user commands to participate in acceptance testing.”

Pub. L. 103-160, div. A, title VIII, §835(b), Nov. 30, 1993, 107 Stat. 1717, related to funding for Defense Acquisition Pilot Program, and authorized the Secretary of Defense to expend appropriated sums as necessary to carry out next phase of acquisition program cycle after Secretary determined that objective quantifiable performance expectations relating to execution of that phase had been identified, prior to repeal by Pub. L. 103-355, title V, §5002(b), Oct. 13, 1994, 108 Stat. 3350.

Pub. L. 103-160, div. A, title VIII, §839, Nov. 30, 1993, 107 Stat. 1718, provided that:

“(a) COLLECTION AND ANALYSIS OF PERFORMANCE INFORMATION.—The Secretary of Defense shall collect and analyze information on contractor performance under the Defense Acquisition Pilot Program.

“(b) INFORMATION TO BE INCLUDED.—Information collected under subsection (a) shall include the history of the performance of each contractor under the Defense Acquisition Pilot Program contracts and, for each such contract performed by the contractor, a technical evaluation of the contractor's performance prepared by the program manager responsible for the contract.”

Pub. L. 101-510, div. A, title VIII, §809, Nov. 5, 1990, 104 Stat. 1593, as amended by Pub. L. 102-484, div. A, title VIII, §811, Oct. 23, 1992, 106 Stat. 2450; Pub. L. 103-160, div. A, title VIII, §832, Nov. 30, 1993, 107 Stat. 1715, provided that:

“(a) AUTHORITY TO CONDUCT PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in defense acquisition programs.

“(b) DESIGNATION OF PARTICIPATING PROGRAMS.—(1) Subject to paragraph (2), the Secretary may designate defense acquisition programs for participation in the pilot program.

“(2) The Secretary may designate for participation in the pilot program only those defense acquisition programs specifically authorized to be so designated in a law authorizing appropriations for such program enacted after the date of the enactment of this Act [Nov. 5, 1990].

“(c) CONDUCT OF PILOT PROGRAM.—(1) In the case of each defense acquisition program designated for participation in the pilot program, the Secretary—

“(A) shall conduct the program in accordance with standard commercial, industrial practices; and

“(B) may waive or limit the applicability of any provision of law that is specifically authorized to be waived in the law authorizing appropriations referred to in subsection (b)(2) and that prescribes—

“(i) procedures for the procurement of supplies or services;

“(ii) a preference or requirement for acquisition from any source or class of sources;

“(iii) any requirement related to contractor performance;

“(iv) any cost allowability, cost accounting, or auditing requirements; or

“(v) any requirement for the management of, testing to be performed under, evaluation of, or reporting on a defense acquisition program.

“(2) The waiver authority provided in paragraph (1)(B) does not apply to a provision of law if, as determined by the Secretary—

“(A) a purpose of the provision is to ensure the financial integrity of the conduct of a Federal Government program; or

“(B) the provision relates to the authority of the Inspector General of the Department of Defense.

“(d) PUBLICATION OF POLICIES AND GUIDELINES.—The Secretary shall publish in the Federal Register a proposed memorandum setting forth policies and guidelines for implementation of the pilot program under this section and provide an opportunity for public comment on the proposed memorandum for a period of 60 days after the date of publication. The Secretary shall publish in the Federal Register any subsequent proposed change to the memorandum and provide an opportunity for public comment on each such proposed change for a period of 60 days after the date of publication.

“(e) NOTIFICATION AND IMPLEMENTATION.—(1) The Secretary shall transmit to the congressional defense committees a written notification of each defense acquisition program proposed to be designated by the Secretary for participation in the pilot program.

“(2) If the Secretary proposes to waive or limit the applicability of any provision of law to a defense acquisition program under the pilot program in accordance with this section, the Secretary shall include in the notification regarding that acquisition program—

“(A) the provision of law proposed to be waived or limited;

“(B) the effects of such provision of law on the acquisition, including specific examples;

“(C) the actions taken to ensure that the waiver or limitation will not reduce the efficiency, integrity, and effectiveness of the acquisition process used for the defense acquisition program; and

“(D) a discussion of the efficiencies or savings, if any, that will result from the waiver or limitation.

“(f) LIMITATION ON WAIVER AUTHORITY.—The applicability of the following requirements of law may not be waived or limited under subsection (c)(1)(B) with respect to a defense acquisition program:

“(1) The requirements of this section.

“(2) The requirements contained in any law enacted on or after the date of the enactment of this Act [Nov. 5, 1990] if that law designates such defense acquisition program as a participant in the pilot program, except to the extent that a waiver of such requirement is specifically authorized for such defense acquisition program in a law enacted on or after such date.

“(g) TERMINATION OF AUTHORITY.—The authority to waive or limit the applicability of any law under this section may not be exercised after September 30, 1995.”

#### § 2431. Weapons development and procurement schedules

(a) The Secretary of Defense shall submit to Congress each calendar year, not later than 45 days after the President submits the budget to Congress under section 1105 of title 31, budget justification documents regarding development and procurement schedules for each weapon system for which fund authorization is required by section 114(a) of this title, and for which any funds for procurement are requested in that budget. The documents shall include data on operational testing and evaluation for each weapon system for which funds for procurement are requested (other than funds requested only for the procurement of units for operational testing and evaluation, or long lead-time items, or both). A weapon system shall also be included in the annual documents required under this subsection in each year thereafter until procure-

ment of that system has been completed or terminated, or the Secretary of Defense certifies, in writing, that such inclusion would not serve any useful purpose and gives his reasons therefor.

(b) Any documents required to be submitted under subsection (a) shall include detailed and summarized information with respect to each weapon system covered and shall specifically include each of the following:

(1) The development schedule, including estimated annual costs until development is completed.

(2) The planned procurement schedule, including the best estimate of the Secretary of Defense of the annual costs and units to be procured until procurement is completed.

(3) To the extent required by the second sentence of subsection (a), the result of all operational testing and evaluation up to the time of the submission of the documents, or, if operational testing and evaluation has not been conducted, a statement of the reasons therefor and the results of such other testing and evaluation as has been conducted.

(4)(A) The most efficient production rate, the most efficient acquisition rate, and the minimum sustaining rate, consistent with the program priority established for such weapon system by the Secretary concerned.

(B) In this paragraph:

(i) The term “most efficient production rate” means the maximum rate for each budget year at which the weapon system can be produced with existing or planned plant capacity and tooling, with one shift a day running for eight hours a day and five days a week.

(ii) The term “minimum sustaining rate” means the production rate for each budget year that is necessary to keep production lines open while maintaining a base of responsive vendors and suppliers.

(c) In the case of any weapon system for which procurement funds have not been previously requested and for which funds are first requested by the President in any fiscal year after the Budget for that fiscal year has been submitted to Congress, the same documentation requirements shall be applicable to that system in the same manner and to the same extent as if funds had been requested for that system in that budget.

(Added Pub. L. 93-155, title VIII, § 803(a), Nov. 16, 1973, 87 Stat. 614, § 139; amended Pub. L. 94-106, title VIII, § 805, Oct. 7, 1975, 89 Stat. 538; Pub. L. 96-513, title V, § 511(5), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97-86, title IX, § 909(c), Dec. 1, 1981, 95 Stat. 1120; Pub. L. 97-258, § 3(b)(1), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98-525, title XIV, § 1405(3), Oct. 19, 1984, 98 Stat. 2621; renumbered § 2431 and amended Pub. L. 99-433, title I, §§ 101(a)(5), 110(d)(12), (g)(6), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 100-180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101-510, div. A, title XIII, § 1301(13), title XIV, § 1484(f)(3), Nov. 5, 1990, 104 Stat. 1668, 1717; Pub. L. 103-355, title III, § 3001, Oct. 13, 1994, 108 Stat. 3327; Pub. L. 104-106, div. D, title XLIII, § 4321(b)(18), Feb. 10, 1996, 110 Stat. 673.)