

(i) transfer mature technologies from the new system or other systems to enhance the mission capability of the existing system against relevant threats; and

(ii) provide interoperability with the new system during the period from initial fielding until the new system assumes the majority of responsibility for the mission of the existing system.

(c) EXCEPTIONS.—Subsection (a) shall not apply to a major defense acquisition program if the Secretary of Defense determines that—

(1) the existing system is no longer relevant to the mission;

(2) the mission has been eliminated;

(3) the mission has been consolidated with another mission in such a manner that another existing system can adequately meet the mission requirements; or

(4) the duration of time until the new system assumes the majority of responsibility for the existing system's mission is sufficiently short so that mission availability, capability, interoperability, and force protection requirements are maintained.

(d) WAIVER.—The Secretary of Defense may waive the applicability of subsection (a) to a major defense acquisition program if the Secretary determines that, but for such a waiver, the Department would be unable to meet national security objectives. Whenever the Secretary makes such a determination and authorizes such a waiver, the Secretary shall submit notice of such waiver and of the Secretary's determination and the reasons therefor in writing to the congressional defense committees.

(Added Pub. L. 108-375, div. A, title VIII, § 805(a)(1), Oct. 28, 2004, 118 Stat. 2008, § 2437; renumbered § 4321, Pub. L. 116-283, div. A, title XVIII, § 1848(b), Jan. 1, 2021, 134 Stat. 4258.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4321 was renumbered section 7421 of this title.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2437 of this title as this section.

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.

EFFECTIVE DATE

Pub. L. 108-375, div. A, title VIII, § 805(b), Oct. 28, 2004, 118 Stat. 2009, provided that: "Section 2437 of title 10, United States Code [now 10 U.S.C. 4321], as added by subsection (a), shall apply with respect to a major defense acquisition program for a system that is under development as of the date of the enactment of this Act [Oct. 28, 2004] and is not expected to reach initial operational capability before October 1, 2008. The Secretary of Defense shall require that a sustainment plan under that section be developed not later than one year after the date of the enactment of this Act for the existing

system that the system under development is intended to replace."

§ 4323. Sustainment reviews

(a) IN GENERAL.—The Secretary of each military department shall conduct a sustainment review of each covered system not later than five years after declaration of initial operational capability of a major defense acquisition program, and every five years thereafter throughout the life cycle of the covered system, to assess the product support strategy, performance, and operation and support costs of the covered system. The results of the sustainment review shall be documented in a memorandum by the relevant decision authority. The Secretary concerned shall make the memorandum and supporting documentation for each sustainment review available to the Under Secretary of Defense for Acquisition and Sustainment within 30 days after the review is completed.

(b) ELEMENTS.—At a minimum, the review required under subsection (a) shall assess execution of the life cycle sustainment plan of the covered system and include the following elements:

(1) An independent cost estimate for the remainder of the life cycle of the program.

(2) A comparison of actual costs to the amount of funds budgeted and appropriated in the previous five years, and if funding shortfalls exist, an explanation of the implications on equipment availability.

(3) A comparison between the assumed and achieved system reliabilities.

(4) An analysis of the most cost-effective source of repairs and maintenance.

(5) An evaluation of the cost of consumables and depot-level repairables.

(6) An evaluation of the costs of information technology, networks, computer hardware, and software maintenance and upgrades.

(7) As applicable, an assessment of the actual fuel efficiencies compared to the projected fuel efficiencies as demonstrated in tests or operations.

(8) As applicable, a comparison of actual manpower requirements to previous estimates.

(9) An analysis of whether accurate and complete data are being reported in the cost systems of the military department concerned, and if deficiencies exist, a plan to update the data and ensure accurate and complete data are submitted in the future.

(10) As applicable, information regarding any decision to restructure the life cycle sustainment plan for a covered system or any other action that will lead to critical operating and support cost growth.

(c) COORDINATION.—The review required under subsection (a) shall be conducted in coordination with the requirements of sections 4324 and 4325 of this title.

(d) SUBMISSION TO CONGRESS.—(1) Not later than September 30 of each fiscal year, the Secretary of each military department shall annually submit to the congressional defense committees the sustainment reviews required by this section for such fiscal year.

(2) Each submission under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(3) For a covered system with critical operating and support cost growth, such submission shall include a remediation plan to reduce operating and support costs or a certification by the Secretary concerned that such critical operating and support cost growth is necessary to meet national security requirements.

(e) DEFINITIONS.—In this section:

(1) COVERED SYSTEM.—The term “covered system” shall have the meaning given in section 4324 of this title.

(2) CRITICAL OPERATING AND SUPPORT COST GROWTH.—The term “critical operating and support cost growth” means operating and support cost growth—

(A) of at least 25 percent more than the estimate documented in the most recent independent cost estimate for the covered system; or

(B) of at least 50 percent more than the estimate documented in the original Baseline Estimate (as defined in section 4214(d) of this title) for the covered system.

(Added Pub. L. 114-328, div. A, title VIII, §849(c)(1), Dec. 23, 2016, 130 Stat. 2293, §2441; amended Pub. L. 115-91, div. A, title VIII, §§816, 836(b)(2), Dec. 12, 2017, 131 Stat. 1462, 1473; renumbered §4323 and amended Pub. L. 116-283, div. A, title VIII, §802(c), title XVIII, §§1848(c), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3732, 4258, 4294.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1848(c), renumbered section 2441 of this title as this section.

Subsec. (a). Pub. L. 116-283, §802(c)(1), in first sentence, substituted “covered system” for “major weapon system”, “, and every five years thereafter throughout the life cycle of the covered system,” for “and throughout the life cycle of the weapon system”, and “costs of the covered system” for “costs of the weapon system” and struck out second sentence which read as follows: “For any review after the first one, the Secretary concerned shall use availability and reliability thresholds and cost estimates as the basis for the circumstances that prompt such a review.”

Subsec. (b). Pub. L. 116-283, §802(c)(2)(A), inserted “assess execution of the life cycle sustainment plan of the covered system and” before “include the following elements:” in introductory provisions.

Subsec. (b)(10). Pub. L. 116-283, §802(c)(2)(B), added par. (10).

Subsec. (c). Pub. L. 116-283, §1848(c), substituted “sections 4324 and 4325” for “sections 2337 and 2337a”.

Subsec. (d). Pub. L. 116-283, §802(c)(3), added subsec. (d).

Subsec. (e). Pub. L. 116-283, §802(c)(3), added subsec. (e).

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

Subsec. (e)(2)(B). Pub. L. 116-283, §1883(b)(2), substituted “section 4214(d)” for “section 2435(d)”.

2017—Subsec. (a). Pub. L. 115-91, §816, inserted at end “The Secretary concerned shall make the memorandum and supporting documentation for each sustainment review available to the Under Secretary of Defense for Acquisition and Sustainment within 30 days after the review is completed.”

Subsec. (c). Pub. L. 115-91, §836(b)(2), substituted “sections 2337 and 2337a of this title” for “section 2337 of this title and section 832 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2430 note)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1848(c) 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.

§ 4324. Life-cycle management and product support

(a) GUIDANCE ON LIFE-CYCLE MANAGEMENT.—The Secretary of Defense shall issue and maintain comprehensive guidance on life-cycle management and the development and implementation of product support strategies for covered systems. The guidance issued pursuant to this subsection shall—

(1) maximize competition and make the best possible use of available Department of Defense and industry resources at the system, subsystem, and component levels; and

(2) maximize value to the Department of Defense by providing the best possible product support outcomes at the lowest operations and support cost.

(b) LIFE CYCLE SUSTAINMENT PLAN.—

(1) IN GENERAL.—Before granting Milestone B approval (or the equivalent), the milestone decision authority shall ensure that each covered system has an approved life cycle sustainment plan for which the milestone decision authority has received views from appropriate materiel, logistics, or fleet representatives. The life cycle sustainment plan shall include—

(A) a comprehensive product support strategy;

(B) performance goals, including key performance parameters for sustainment, key system attributes of the covered system, and other appropriate metrics;

(C) an approved life-cycle cost estimate for the covered system;

(D) affordability constraints and key cost factors that could affect the operating and support costs of the covered system;

(E) sustainment risks and proposed mitigation plans for such risks;

(F) engineering and design considerations that support cost-effective sustainment of the covered system;

(G) an intellectual property management plan for product support, including requirements for technical data, software, and modular open system approaches (as defined in section 4401 of this title);

(H) an estimate of the number of personnel needed to operate and maintain the covered system, including military personnel, Federal employees, contractors, and host nation support personnel (as applicable);

(I) a description of opportunities for foreign military sales; and

(J) major maintenance and overhaul requirements that will be required during the life cycle of the covered system.

(2) SUBSEQUENT PHASES.—Before granting Milestone C approval (or the equivalent) for the covered system, the milestone decision au-